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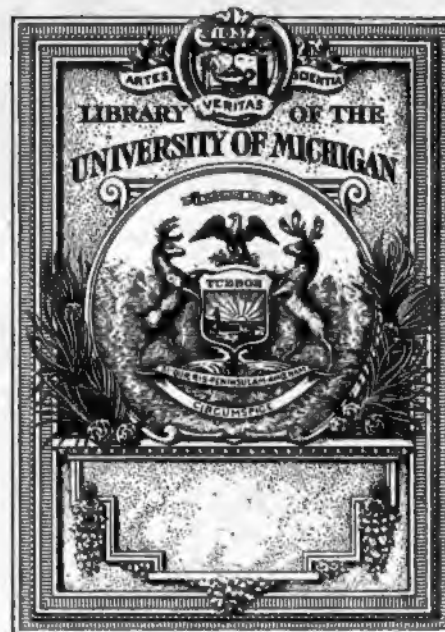
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# INTERVENTION IN INTERNATIONAL LAW

By  
**ELLERY C. STOWELL**  
AUTHOR OF THE DIPLOMACY OF THE WAR OF 1914

*But war's a game which were their subjects wise  
Kings would not play at—COWPER*

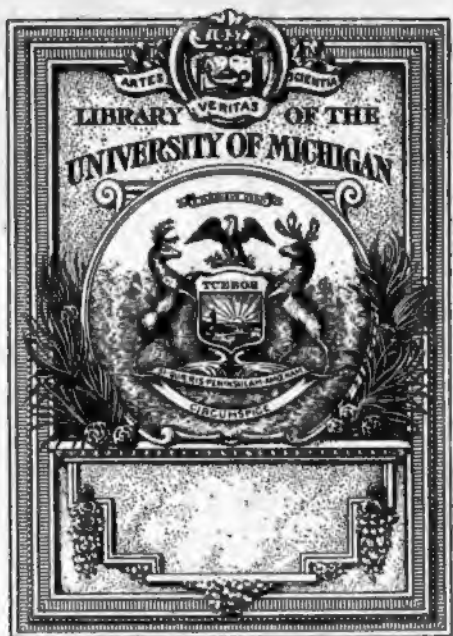
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1921

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*Published November, 1921*

To  
THE SPIRIT OF  
HIGH IDEALISM AND PRACTICALITY  
BY WHICH  
IN THE CONDUCT OF FOREIGN POLICY  
AND  
THE OBSERVANCE OF THE LAW OF NATIONS  
THE TWO BRANCHES OF THE ANGLO-AMERICAN AMITY  
WERE GUIDED TOWARD  
THE COMMON AIM OF INTERNATIONAL JUSTICE  
BY  
THEODORE ROOSEVELT AND SIR EDWARD GREY  
THIS BOOK IS DEDICATED

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this happy mean in the light of the precedents drawn from actual practice.

This investigation has resulted in the formulation for the first time—as far as I am aware—of a rule of transcending practical importance for the preservation of a just peace among nations, namely: That no state shall unreasonably insist upon its rights or pursue its interests to the detriment of the opposing rights and interests of other states. The refusal to evince a spirit of considerate compromise or adjustment upon the basis of the relative importance of the conflicting rights and interests is a violation of international law, which justifies an appeal to intervention.

Viewed in their proper perspective of subordination to this general rule, all the other just grounds of intervention can be discovered and defined so that all states of good will may give heed to the law and coöperate to check the transgressions of the evil-doer.

Intervention in the relations between states is, it will be seen, the rightful use of force or the reliance thereon to constrain obedience to international law.

E. C. S.

*Washington, October 11, 1921.*



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## CHAPTER I

### INTERPOSITION

#### § 1. ENFORCEMENT OF INTERNATIONAL LAW

The real value of any system of law depends upon the efficacy of its machinery of enforcement. The legal maxim: No right without a remedy, applies also to the law of nations, which is not without remedies to protect rights from injury. They are not, it is true, the same as those employed in our municipal law; for the law of nations controls individuals through their governments, which it holds responsible for the observance of the law. Hence it follows that international remedies must usually be directed in first instance against the delinquent government.

#### SOVEREIGNTY

This control of the government over individuals is carried out through the instrumentality of territorial sovereignty, which is thus seen to be the very heart of the system. Each independent state is, as it were, the agent of the law of nations to enforce international law within the territorial jurisdiction over which it holds sway. In the absence of a strongly organized central authority, no other system is practical. The independent states of which international society is composed are jealous of any interference with their liberty of action within their own territory, and sovereignty is the only system of enforcing the law which does not interfere. Perhaps it would be more accurate

to say that sovereignty is the system which reduces this outside interference to a minimum.

### INTERPOSITION

International commerce and travel lead to the establishment of large numbers of aliens within the confines of each independent state. Their rights and privileges are placed under the protection of international law, and each sovereign state in fulfilling its obligations under the law is bound to provide that they suffer no injury. Even in the most civilized state some instances of injustice will occur, but the injured foreigner who has sought in vain to secure redress through the means afforded by the state where he is sojourning may bring his grievance to the representatives of his own government, and request their interposition in his defense.

Interposition may be defined as justifiable action undertaken by a state to induce another state to respect its rights under international law, including the rights of its nationals.<sup>1</sup> The protection of nationals through interposition thus plays the part of a useful check upon the exercise of sovereignty, which might otherwise be inclined at times to disregard international law.<sup>2</sup> For sovereignty is not, as some believe, a right to act with absolute independence. It is no more than a presump-

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<sup>1</sup>It is important to use the term "interposition" in the sense of intervention to secure redress for the failure to recognize the international law rights of the intervening state and those for the protection of whose interests it is responsible,—generally its nationals. This use is sanctioned by present practice. Formerly it was customary to use "diplomatic intervention." "Interposition" is also currently used for intervention or interference between two states or factions in conflict. This use leads to confusion, and should be avoided.

<sup>2</sup>Hall has noted this balance between territorial sovereignty and the right of other states to protect their nationals. (W. E. Hall: *Foreign Jurisdiction of the British Crown*, §5, p. 4.)

tion that any action which a state may take within its own territory in the furtherance of international law is correctly taken. So strong is this presumption that before any other interested nation may interpose in favor of a national it must show beyond a reasonable doubt that he has been deprived of some of his rights under international law. When once the evidence is sufficient to overcome the presumption of legality of the action of the sovereign, the situation is reversed—the interposing state now has the law of nations on its side and by that law is justified in insisting upon its rights.<sup>3</sup> If milder measures prove unavailing, the interposing state may use whatever force is reasonably necessary to secure the recognition of its rights.

### SELF-HELP

It sometimes happens that a weak or harassed government is unable or unwilling to compel its nationals to observe international law. In such a situation, the state whose nationals or whose interests are endangered may act directly to compel the observance of in-

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“The right of the government to intervene [interpose] for the protection of its citizens in foreign lands and on the high seas never was doubted; nor was such action withheld in proper cases.” (J. B. Moore: *American Diplomacy* (1905) 131). This eminent authority has always regarded the protection of nationals as a right of the citizen which the government is obligated to undertake in so far as the superior interests of the nation will allow.

Compare this with Professor Borchard's statement (*Diplomatic Protection*, p. 13): “If these rights of an alien are violated without proper redress in the state of residence, his home state is warranted by international law in coming to his assistance and interposing diplomatically in his behalf.” (Cf. *ibid.* 399-400.)

Sir Travers Twiss is still more emphatic and considers that a nation may not forego insistence upon its rights. (*Law of Nations*, Vol. II, p. 5.)

See also remarks of Lord Cromer: *Ancient and Modern Imperialism*, p. 3-4.

ternational law. Action so taken is called "self-help,"<sup>3a</sup> and is a remedy which supplements interposition. The annals of international relations are full of interesting instances of self-help. In 1831, when the authorities of what is now the Republic of Argentina failed to impose upon the inhabitants of the Falkland Islands a proper respect for the rights of American whalers repairing thither, the Government of the United States had recourse to self-help and administered directly a well-merited punishment. The derelict condition of authority over these islands was terminated by England again taking possession of them, notwithstanding the protest of the Buenos Aires Government. The Government of Argentina has long persisted in maintaining that the United States was in some measure to blame for this result. In his annual message of December 8, 1885, President Cleveland said:

"The Argentine Government has revived the long dormant question of the Falkland Islands, by claiming from the United State indemnity for their loss, attributed to the action of the commander of the sloop-of-war *Lexington* in breaking up a piratical colony on those islands in 1831, and their subsequent occupation by Great Britain. In view of the ample justification

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<sup>3a</sup>Since recourse to self-help is never had except in cases where it is necessary for the preservation of the most important—that is the vital—interests of the state, there is here, as elsewhere, a tendency to confuse the purpose with the means and to speak of the remedial action of self-help as self-preservation or self-defense. Self-help is only one of the methods of employing such means as are found best adapted to secure respect for the rights of a state. In self-defense and for self-preservation, states often have recourse to measures of force by way of self-help.

The term self-help is often used to denote the system of self-enforcement of the law, which is characteristic of international relations. A better term is interposition (see above p. 2).

for the act of the *Lexington* and the derelict condition of the islands before and after their alleged occupation by Argentine colonists, this Government considers the claim as wholly groundless.” (Moore’s Digest, vol. I, p. 298. The incident is also discussed *ibid.* p. 876-890, and in Stowell and Munro: *International Cases*, vol I, p. 208-217.)

An interesting instance of collective action in the nature of self-help was that taken by the European powers against the Prince of Chosu in 1864. The Tycoon was unable, himself, to make this unruly vassel observe the treaties, but he did not oppose the direct action of the government intervening to enforce a compliance. In fact, the Shogun’s Government agreed to pay the cost of the expedition, thus indicating that the action might be considered as taken for the purpose of fulfilling the obligation incumbent upon the local sovereign.<sup>4</sup>

In 1837, the Canadian authorities crossed into the State of New York at Niagara and destroyed the Steamer *Caroline*, in which the Fenians were preparing to invade Canada. In the affray, one man was killed, and later when one McLeod boasted within the State of New York of his participation in this case, he was promptly arrested and indicted for murder. The British authorities demanded his release on the ground that, after the British Government had accepted full

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<sup>4</sup>See P. J. Treat: *The Early Diplomatic Relations between the United States and Japan*; Moore’s *International Law Digest*, vol. V, p. 749-750.

The matter of the obligation of the territorial sovereign to pay for intervention undertaken by way of coöperation to establish order arose also in connection with the intervention of the United States in Cuba, 1906-1909. (See *Foreign Relations*, 1911, p. 132-135.) The Cuban Government contended that it was not obligated to reimburse the United States for the expense of this undertaking.

responsibility for McLeod's act, any discussion of the matter must be conducted between the governments concerned. The incident was settled by the acquittal of McLeod and the enactment of federal legislation to enable the federal authorities thenceforth to release any person held under similar circumstances.<sup>5</sup>

In the wars which have been fought over and about Chinese territory, the weakness of the Celestial Empire has given rise to interesting questions of self-help, as when Japan, at the time of the war with Russia in 1904, entered the harbor of Shanghai and destroyed the Russian vessel *Reshitelni*, which had taken refuge there (Westlake, vol. II, p. 239). Similarly, in 1914, the British cruisers destroyed the German warship *Dresden* when lying within the territorial waters of Chile (Stowell and Munro: Cases, vol. II, p. 274-8). In the absence of any adequate authority to insure the observance of neutrality, it is difficult to condemn these acts without qualification, high-handed as they unquestionably were. It may, however, be doubted whether the military advantage which results from such a course offers compensation sufficient to balance the shock to the public opinion of the world.

#### NATIONAL CONTROL

These, then, are the three methods of procedure for the enforcement of international law: sovereignty; interposition; and self-help. They form a system effective throughout the inhabited portions of the globe. But international commerce makes use of the sea and bids fair soon to traverse the regions of the air. There are no officials of any state to exercise dominion over the high seas or the upper air. Hence it has been found necessary to supplement territorial sovereignty

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<sup>5</sup>See Stowell and Munro, vol. I, p. 121-3.



by a projection of itself, which we may call "national control." Through national control, jurisdiction is extended over vessels traversing sea and air. The territorial sovereign from whom the national control emanates is internationally responsible for the observance of international law on board the vessel that flies its flag. Should any state fail to fulfil this obligation, the difficulty may be met by the injured state through recourse to interposition or even self-help, as discussed above.<sup>6</sup>

### COÖPERATION

International law, as perpetuated through an evolution centuries old, has other methods of enforcement to facilitate in certain exceptional circumstances the workings of its system of territorial sovereignty. One of these we may designate as "coöperation"—for example, when a state, acting for the common good, punishes a pirate, even when its own immediate interests are not concerned. Similarly, in fulfilment of their obligations under coöperation, states make provision for the reciprocal extradition of fugitives from justice.<sup>7</sup>

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<sup>6</sup>The case of the *Virginus* involved this principle. See Stowell and Munro: *International Cases*, vol. I, p. 368-371; Westlake: *International Law*, vol. I, p. 171-3. Cf. Westlake, vol. I, p. 167, for discussion of the nature of jurisdiction on the high sea.

<sup>7</sup>This is shown by the following extract from an article by Roy Emerson Curtis on "The law of hostile military expeditions as applied by the United States" (*American Journal of International Law*, April, 1914, p. 225-6):

"The Government of the United States has been accustomed to coöperate with foreign governments in the matter of the investigation of possible violations of the law, and occasionally it has supplied information of importance to other states in warding off attacks of expeditions which this government might not be able to repress. In 1884, the Canadian

I quote from Alpheus H. Snow the following extract relative to the suppression of the slave trade as a good illustration of coöperation: "In 1841 Great Britain, Austria, France, Prussia, and Russia entered into a treaty open to all the powers for the suppression of the slave trade by granting to each a reciprocal limited right of visitation, search, and capture of ships engaged in the slave trade, restricted to certain identified naval vessels, carefully regulated and confined to delimited areas of the ocean. In 1842 the United States entered into a similar treaty with Great Britain, which was supplanted by a treaty of April 7, 1862, for the more effectual suppression of the slave trade." (Alpheus H. Snow: *The Question of Aborigines in the Law and Practice of Nations*, p. 97.)

#### COMBINATION

Practical considerations and local characteristics have divided the world into the independent portions which we designate as states, but in many respects the

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Government sought information from the United States concerning the basis of rumors circulated in the press of this country that a Fenian invasion was in preparation. The authorities investigated and made a report of the situation to the British minister (MS. Notes to Great Britain, XIX: 438, Moore's Digest, vol. VII, p. 931). The raids of the Garza bandits on the Mexican boundary, and the natural obstacles to preventing them, called forth the suggestion from the Mexican Government that it would be well for the War Department of each country to inform the other of what forces it proposed to assign to preserve the peace on its frontiers, and what system it proposed to adopt for the attainment of this end, so that, by both acting in concert, the purpose of both governments might be more easily accomplished. The United States concurred in this suggestion." (Foreign Relations, 1893, p. 442, and p. 446-7.) The United States would not go to the extent of making an "alliance" for such purposes. (Foreign Relations, 1886, p. 57.) For other instances of coöperative action, see Stowell and Munro: *International Cases*, vol. I, chapters IX, X, XI.

interests of humanity are one, and upon occasion the governments of the independent states sink their jealousies to form a "combination" for the regulation of matters beyond the scope of their separate action. As an example we may take the international commission established to govern the navigation of the Danube. To take a more recent example, by the Treaty of Peace, Fiume was placed under international control. Similarly, international unions, such as the Universal Postal Union of Berne, are constituted to govern world relations in some particular matter.<sup>8</sup>

## § 2. REDRESS

The purpose of interposition is to obtain redress, by which is meant the exaction from the delinquent state of expiation for any hurt to honor and prestige; of indemnification for material injury, and of reasonable security against the repetition of the offense. The offending state is punished by enforced compliance with these requirements, or by such reasonable severity as the circumstances may justify.

The idea of redress was primarily based upon revenge, and it is necessary to remember this in trying to understand the history of the evolution of all legal procedure.

To understand revenge it is necessary to analyze it into its component parts. The first of these is the impulse to do something to alleviate the physical or mental anguish inflicted by the injury—counter-injury upon the offender being virtually instinctive, as is shown by the presence of the same motives among animals.<sup>9</sup>

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<sup>8</sup>For many instances of international combination and treaty stipulations relative thereto, see *Annuaire de la Vie Internationale*, Brussels, 1908-1909; and Paul S. Reinsch: *Public International Unions*, 1911.

<sup>9</sup>George J. Romanes (*Animal Intelligence*, 4 ed., London, 1886, p. 387-9), relates some remarkable instances where ele-

An impulse so widespread and so persistent must obtain a presumption in favor of its usefulness to animal creation. Even the weak are shielded by revenge from a large measure of imposition of injustice which they would otherwise be made to endure from more powerful neighbors. One is reminded of the legend under the thistle on the Scottish arms, "Nemo me impune lacesset" [Let no one assail me with impunity].

The motive which we have been discussing is evidently individual and selfish. The sweets of revenge assuage the feelings of the individual without regard to the effect his revenge may have upon his fellows. Perhaps the best name we can give to the fulfilment of this subjective craving is satisfaction.

The more primitive egotistical craving for satisfaction, however important and useful in preserving respect for the personality of an individual, is often in conflict with the general interests of the community, since the individual in his pursuit of revenge may engender strife weakening to the society of which he is a part. This evil existed in the case of family and tribal feuds, in which the avengers were constantly embroiling the community in order to gratify their more selfish lust for revenge.<sup>10</sup> The realization of this danger led primitive political organizations to restrict the free play of this passion for revengeful satisfaction by requiring a certain form of procedure for its applica-

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phants have avenged themselves upon their tormentors after nursing their wrath for a long period. He also gives other instances of vindictiveness in animals. See Romanes's index.

<sup>10</sup>In this case, the desire of preserving a good name in the tribe also had a part, and actuated the avengers, but satisfaction would seem to have been the element most difficult to bring into harmony with the requirements of public safety.

tion, and by prohibiting acts of vengeance at certain times and places.<sup>11</sup>

The League of the Iroquois adopted comprehensive regulations to eliminate private vengeance between the tribes of the confederation.<sup>12</sup> Modern society replaces vengeance by penal statutes and the regular procedure of its law courts.<sup>13</sup> Police officials and the officers of the courts take appropriate action to punish the trans-

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<sup>11</sup>The Law of the Talion, as set forth in the Mosaic Law and ancient codes, is such a restriction. The codes of the Germanic tribes contain elaborate provisions which served this purpose. Sanctuaries were recognized as affording asylum to fugitives from the wrath of the avenger.

<sup>12</sup>"The wars among the Indian tribes arise almost always from individual murders. The killing of a tribesman by the members of another community concerns his whole people. If satisfaction is not promptly made, war follows, as a matter of course.\* The founders of the Iroquois commonwealth decreed that wars for this cause should not be allowed to rise between any of their cantons. On this point a special charge was given to the members of the Great Council. They were enjoined (in the figurative language employed throughout the book) not to allow the murder to be discussed in a national assembly, where the exasperation of the young men might lead to mischief, but to reserve it for their own consideration; and they were required as soon as possible to bury all animosities that might arise from it. The figure employed is impressive. They were to uproot a huge pine-tree—the well-known emblem of their League—disclosing a deep cavity, below which an underground stream would be swiftly flowing. Into this current they were to cast the cause of trouble, and then, replacing the tree, hide the mischief forever from their people." (Horatio Hale: *The Iroquois Book of Rites*, Philadelphia, 1883, p. 68-9.)

<sup>13</sup>"At length the pursuit of revenge (*Blutrach*) is punished by the state, and what was once a sacred duty is thereby transformed into a crime." (Translated from Post: *Ethnologische Jurisprudenz*, p. 261.)

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\*[Hale's note] *Relation*, of 1636, p. 119. "C'est de là que naissent les guerres, et c'est un sujet plus que suffisant de prendre les armes contre quelque village quand il refuse de satisfaire par les presents ordonnez, pour celuy qui vous aurait tué quelq'un des vostres." (Brebeuf, on the Hurons.)

gressor. We are accustomed to regard our criminal procedure as intended to warn evildoers and to preserve society from their misdeeds, but a closer examination will show that it still retains many indications of its original purpose, which was to preserve the public peace. For example, many misdeeds go unpunished unless the wronged individual lodges a complaint and calls into action the machinery of the law.<sup>14</sup> Although punishment by the courts has been substituted for revenge, in some countries duels are still in vogue. When we turn to the family of nations, we shall find that the government often has to yield to popular cries for revenge.<sup>15</sup> This primitive lust for revenge is still an important factor in international relations.

In municipal affairs, where private revenge has been so largely replaced by the strong arm of the law, revenge retains only the illicit and anti-social function of satisfying individual resentment. The avenger acts to

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<sup>14</sup>An indication of this is perhaps to be found in the law of libel, according to which the truth of a defamatory statement is no defense in a criminal action. (See "Libel," *Encyclopædia Britannica*, 11 ed., vol. 3, p. 537; Hugh Fraser: *The Law of Libel and Slander*, p. 233.)

Another indication may well be the old system of trial by compurgators, who swore to their belief in the innocence of the accused. (See Reeves: *History of English Law*, American edition, 1880, vol. I, p. 205. See also *Century Dictionary*, under "Compurgator.") In ancient times, the compurgators would evidently bring to the accused something more than a moral support. It was logical in view of this system of compurgators that ancient law should take no account of the casual witness who might have chanced to see the act under consideration.

<sup>15</sup>In his electioneering campaign, Lloyd George gained many adherents by promising to bring the Kaiser to trial in London, and to make Germany pay to the last penny. See J. M. Keynes: *The Economic Consequences of the Peace*, p. 139-145.

relieve his wounded feelings and so to let down the tension which has resulted from the causal act.<sup>16</sup>

The second of the component parts of revenge is intimately associated with the social life of the community and is the expression of the effort to reacquire the loss of standing (prestige) which has resulted from the infliction of some injury. The action taken under this impulse aims to reëstablish prestige. The word which best serves to designate this is "rehabilitation."<sup>17</sup> These two purposes, satisfaction and rehabilitation, are so entangled in revengeful action that it is very difficult to separate them in any particular instance. They are, nevertheless, quite distinct.

### PRESTIGE

In primitive communities the organization to mete out justice was naturally rudimentary, and revenge was relied upon as the best protection of the weak from the iniquities of the strong. The subconscious realization of social advantage would lead the community to approve and to urge the avenger on. The man who did not avenge an injury would lose the respect of the community. He would lose standing, that is prestige. Whenever there is a loss of prestige, the individual who has suffered will be stimulated to action adequate to regain his position in the society in which he lives. When an individual loses a part of the good opinion which he has previously enjoyed, he is hurt in his own self-esteem. Because of his social instincts and nurture he cannot avoid looking upon himself in the light

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<sup>16</sup>It is recognized as a device of practical psychology to allow a dangerous individual to enjoy a cheap revenge in order to drain off his venom and prevent some more pernicious manifestation.

<sup>17</sup>Among the meanings of rehabilitate, the Century gives: "To reëstablish in the esteem of others or in social position lost by disgrace; restore to public respect."

gressor. We are accustomed to regard our criminal procedure as intended to warn evildoers and to preserve society from their misdeeds, but a closer examination will show that it still retains many indications of its original purpose, which was to preserve the public peace. For example, many misdeeds go unpunished unless the wronged individual lodges a complaint and calls into action the machinery of the law.<sup>14</sup> Although punishment by the courts has been substituted for revenge, in some countries duels are still in vogue. When we turn to the family of nations, we shall find that the government often has to yield to popular cries for revenge.<sup>15</sup> This primitive lust for revenge is still an important factor in international relations.

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ored government and gives him an added self-confidence which also contributes directly to his success.

The elements which go to make up the estimate of prestige in any particular nation must vary. Individuals more highly developed intellectually and socially will admire the administrative efficiency of the governmental machinery of the state, the faithfulness with which it meets its international obligations and assists in the spread of enlightened policies capable of substituting bonds of union between the different communities of the world in place of narrow race or national antagonisms. They will rejoice in anything that contributes to the ability of such a state to expand its influence in its work of civilization and general enlightenment.

The ignorant individual makes his estimate of the prestige of another country principally from the extent of its territory upon the map, and its military prowess, as shown in recent wars. He also takes into account the number and wealth of the individuals of the state with whom he comes in contact. Of course, many other factors enter into this estimate, such as popular songs, histories, pictures, or legends relating to the country. Upon such a basis will be formed that popular respect and approval which constitutes national prestige in other countries. Of all these factors of national prestige, military strength is by far the most important. The possession of this military strength makes it possible to prevent the forcible violation of the nation's rights, and the general understanding that any such attempt would be quickly resented and effectively resisted is, under present conditions, the best insurance of the peaceful enjoyment of a nation's rights. The complexity of international relations makes it difficult for the whole body of citizens to know what the rights of a nation are under international law, and to realize

when these rights have been violated, but everyone understands that his state has a right to a courteous treatment from every other state, and any failure in this respect is immediately resented as an insult. If redress is not exacted for any lapse from courtesy, all perceive that the force looked upon as an insurance against just such an occurrence was in reality paralyzed, and part of the prestige of the insulted state is lost. Throughout the world will prevail a feeling of contempt for the pusillanimous conduct of the state which swallowed the insult. The ensuing loss of prestige will affect the state in the subsequent carrying out of its foreign policy and hamper its nationals throughout the world.<sup>19</sup> The case of the *Trent* and the Fashoda incident (1898) illustrate the importance which the most advanced states attach to the maintenance of their national prestige. In the case of the *Trent*, Presi-

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<sup>19</sup>It is not perhaps the failure to punish the offender which causes the loss of prestige, so much as the belief that the failure to punish indicates a weakness of physical strength or of character. When the capacity to smite is evident, but the blow magnanimously withheld, the effect upon the imagination of the offender may perhaps be greater.

President David P. Barrows of the University of California, in his "Decade of American Government in the Philippines," p. xiii, notes that the Philippine Insurrection was brought to an end in the spring and summer of 1901, ".....when the Filipino 'zone commanders,' who for many months had been exercising practically independent authority in the different provinces of the Archipelago, were captured or forced to surrender. They were all promptly paroled and allowed to return to their homes. Not one of these revolutionary leaders ever broke his parole or took up arms against the United States."

In the course of a discussion which I had with President Barrows, relative to the necessity for the use of force to suppress sedition, he referred to the magnanimous treatment accorded the Filipinos, and thought they were more impressed by the tremendous power of the United States expressed in this way, than they would have been by severe treatment.

dent Lincoln and the Prince Consort did much to avoid popular irritation by toning down the language of the diplomatic correspondence, but war would probably have resulted had it not been for the happy coöperation of Secretary Seward and Lord Lyons to avoid any action hurtful to American prestige. (See Newton's *Life of Lord Lyons*, vol. I, p. 60-66).

A careful reading of the correspondence relative to the Fashoda incident indicates that peace was preserved only because France was allowed to make a retreat which did not seem too humiliating.

This appears from the dispatch of M. Delcassé, Minister of Foreign Affairs, to the French representative at London, October 3, 1898, in which he quotes verbatim his remarks to the British Ambassador, as follows:

“We were the first,” said I, “to reach Fashoda and we took it from the barbarians from whom you, two months later, took Khartum. To ask of us to evacuate Fashoda before entering into any discussion would be equivalent to the presentation of an ultimatum. That being so, who that knows France could doubt our answer? You are not ignorant of my desire for an understanding with England, an understanding as advantageous for England as for France, nor are my conciliatory sentiments unknown to you. I state them to you thus freely because I know, and because you, yourself, are certain that they will not lead me to exceed the limit set by national honor. To reach an understanding between the two countries, I am able to make sacrifices of material interests, but in my hands the national honor shall rest secure. There is not anyone who, in my position, will employ a different language, and perhaps another might not be as well disposed.”<sup>20</sup>

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<sup>20</sup>Extract translated from French Yellow Book, Documents Diplomatiques. *Affaires du Haut-nil et du Bahr-el-Ghazan*,

Roosevelt, in a letter of August 14, 1906, to Henry White, then Ambassador at Rome, said of the Kaiser (Scribner's, April, 1920, p. 394-5): "Moreover, where I have forced him to give way I have been sedulously anxious to build a bridge of gold for him, and to give him the satisfaction of feeling that his dignity and reputation in the face of the world were safe."

Norman Angell, in his interesting and stimulating book, "Europe's Optical Illusion," has marshalled arguments to prove that a victor in a modern war—as, for instance, Germany after the Franco-German War—was, he believes, powerless to reap any economic advantage from the conquest. He points out that a civilized state cannot exterminate the inhabitants of a conquered territory and operate it for the profit of its nationals, and he makes a good case to show that the burdens resulting from a heavy war indemnity are felt more by the state that receives than by the state that pays. But he entirely leaves out of account the great—the vastly important factor of national prestige. Germany's victory in the Franco-German War brought her a great increase in national prestige. It allowed Prussia to secure the lead of the other German states and gave to Bismarck's diplomacy a strong support. It inspired the German nation with a confidence in itself, the results of which are shown in its growth, organization, and industrial development. Wherever Germans have gone they have carried additional confidence and received additional marks of respect because of their victory in 1870. The intellectual classes of the world were indirectly influenced by the German success and flocked to her universities, while France, with all she

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1897-8, p. 16; cf. also Parliamentary Papers, 1898, Egypt. [C. 9054] [C. 9055]. Under cover of a general settlement of their frontiers in Northern Africa, France withdrew her claim to Fashoda.

had to teach, was for a time almost ignored. It would be hard to find any other explanation or any justification for the sudden collapse of French prestige, for France was then what she has recently shown herself to be; but she suffered a great loss of prestige, and French influence was dimmed for a generation. In the course of years there came about a gradual readjustment of political vision and intellectual values, until, in her glorious resistance to German aggression, France has regained the relative position in world influence which she merits. It is impossible to estimate in dollars and cents what those years of prestige meant to Germany. Similarly, it would be impossible to estimate for Japan the value of the prestige she gained through her victory over Russia. We are able to give one concrete instance—she has saved millions of dollars in her interest charges by refunding her debt. Though poor and burdened by taxation, she could, after her war with Russia, borrow upon better terms than she could before. In the course of the succeeding years the sum total of the gain from the prestige consequent upon a successful conflict may be many times greater for the victor than the cost of the loss of life and property, even including such indirect injury as results from arrested development caused by a prolonged war.

The maintenance of a country's honor means the maintenance of its prestige, and even from a material point of view, honor may be considered as its most precious possession. This does not mean that a hasty recourse to force and a brutal castigation need be undertaken upon slight provocation.<sup>21</sup>

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<sup>21</sup>Professor T. E. Holland (Jurisprudence, 4th ed., 1888, p. 327-8) makes "Reputation" one of what he calls "antecedent international rights," and says relative thereto, "Of the right to a good name, it has been well said that 'the glory of a nation is intimately connected with its power, of which

In exceptional instances, public opinion may approve of failure to exact retribution. If the offending state is evidently at the mercy of a stronger aggrieved state, an isolated offense allowed to pass unavenged will appear magnanimous and the public will often admire the self-control which the stronger evinced. This noble sentiment is sometimes carried to an extreme. There is a tendency on the part of impractical idealists to be too ready to consider the failure to exact redress as magnanimity. Magnanimity is out of place when it is likely to be mistaken for fear or weakness and endanger the security of the community through repetition of the offense.

An individual, it has been said, seeks redress to recover the loss of self-esteem—in other words, his estimate of what he has lost in the opinion of the community.<sup>22</sup> To regain his own self-esteem, he must be—

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it is a considerable part. It is this distinction which attracts to it the consideration of other peoples, which makes it respectable in the eyes of its neighbors. A nation the reputation of which is well established, and especially one the glory of which is striking, finds itself sought by all sovereigns. They desire its friendship and fear to offend it. Its friends, and those who wish to become such, favor its enterprises, and its detractors do not venture to show their ill-will.' "

Sir James MacIntosh has well said: "A nation may justly make war for the honor of her flag, or for dominion over a rock, if the one be insulted and the other be unjustly invaded; because acquiescence in the outrage or the wrong may lower her reputation, and thereby lessen her safety." (MacIntosh: *History of the Revolution of 1688*, London, 1834, p. 301.)

<sup>22</sup>The estimate of the community in a large number of cases gives the average extent of the retaliation or revenge, which must be inflicted to achieve rehabilitation, but in any particular case, the individual will be guided necessarily by his own subjective view of what is requisite. If he exacts an exaggerated revenge, counter-retaliation and the condemnation of his fellows will act as a check upon similar offenses in the future. Instead of rehabilitation, his excesses will cause him a still further loss of prestige.

lieve that he has recovered the former good opinion in which he was held by his fellows. What has been said about individuals in a community is in the main true of nations. An intentional injury or insult offered to a state or to those whom the state is bound to protect affects the self-esteem of the entire population because they feel that the respect in which their state was held by others is diminished as long as such an affront is submitted to.

After this short account of the origin of redress from revenge and the force of the motive to secure rehabilitation for the loss of prestige, we shall be better able to take up the consideration of the nature of expiation, the first of the three purposes comprehended in action taken to secure redress. The other two, as we have said above, were indemnification for material injury, and security against a repetition of the offense.

### § 3. EXPIATION

When an international offense has caused material loss, obvious and practical considerations impel the injured state to insist upon an adequate indemnity. But the injurious acts may also have caused a hurt to national honor or prestige; in some instances, injuries of this nature may be the only issue involved.

A hurt to national honor and prestige generally results from an intentional disregard of rights, and may be actuated by one of the following motives:

1st. The desire to pick a quarrel.

2nd. The belief that the injured state is too pusillanimous to resent the wrong done it.

3rd. The belief that the injured state is not strong enough to retaliate.

If the motive is to pick a quarrel, experience shows that there is usually little advantage in delaying the



retaliatory action which the injury warrants, and the sentiment of mankind still applauds the prompt taking up of the defiance. Even if there be superior considerations which should justify a refusal to engage in the conflict, public opinion will surely register its disapproval of the abnegation and the state will, from a popular view-point, suffer a loss of honor and prestige.

The same consequences will result in those instances when the failure to exact redress is due to the craven spirit upon which the injuring state counted.

As regards the third class of instances, when the insulted state is really greatly inferior in strength, the failure to take up arms for redress will not necessarily result in a loss of honor. It will, however, make very clear how inferior is the military strength of the insulted state and its political prestige will suffer.<sup>23</sup>

Sir Edward Creasy has well expressed this: "A state has," he says, "the right to repel and to exact redress for injuries to its honor. This also is a right of self-preservation. For, among nations, as among individuals, those, who tamely submit to insult, will be sure to have insults and outrages heaped upon them until the sense of intolerable wrong drives them into physical contest under probably disadvantageous circumstances, and after they have deprived themselves of that general sympathy which manly and consistent conduct will always obtain for even the unsuccessful brave. Without doubt vainglory and bluster are as detestable in a nation as in a private person. True honor consists in combining self-respect with respect

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<sup>23</sup>In those instances where the insulted state is conspicuously superior in strength to the insulter, a failure to exact redress may enhance prestige. This will be the case when, in the opinion of the public, such abnegation takes on the aspect of magnanimity.



for the feelings and rights of others.'"<sup>24</sup> (Sir Edward S. Creasy: *First Platform of International Law*, London, 1876, p. 153).

To prevent the loss of honor and prestige, the injured state must demonstrate that it has brought the insulter to book, and thereby rehabilitated itself. If the insulter offers resistance, his complete subjection by the sword would be the necessary consequence; but, in general, matters do not proceed to this length. The insult given in hot blood is repented of, or the certainty that the injured state will marshal a superior force for requital begets fear and counsels conciliation. Or it may be that the lowering clouds of war make the contemner afraid to engage in a controversy which will offer his rivals an undisturbed opportunity to advance their designs. In many instances an innate sense of justice and of self-respect will lead the wrong-doer to recognize as unworthy any effort to sustain his act. It then becomes the aim of the provoking state to avoid the consequences of its act, and to arrest the measure of redress. The accomplishment of this purpose is known as "expiation"—that is the acknowledgment of the wrong done by acts expressing contrition.<sup>25</sup>

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<sup>24</sup>Creasy gives the following supplementary note:

"The single Greek word *μισω*, simply and eloquently expresses all this, and much more.

"In making serious contumely to honor a cause for hostile proceedings, international law follows the Roman civil law, according to which, 'Dignitas quoque hominis in jure consideratur,' and 'Injuria' in the form of contumely is described as 'Injuria non bonis damnum factum intelligitur, sed contra personæ dignitatem.'—See Warnkoenig: *Institutiones Juris Romani Privati*, §§ 126 and 986."

<sup>25</sup>The significance of these acts is the ceremonial placing of the offender in the position where he would ultimately be when justly vanquished by the wronged state. The ceremony by expressing this situation proclaims to the world that the result may be considered to have taken place. Both parties thereby save a futile expenditure of blood and treasure.

Expiation may be expressed in various ways, according to the nature of the offense and the situation of the parties.

International rehabilitation, to be adequate, must meet the views of international society. In practice, when there has been any hurt to honor or prestige, rehabilitation is usually sought through the exaction of an apology. A good instance of an apology is found in the following dispatch of February 6, 1858, from Count Walewski, the French Minister of Foreign Affairs, to Count de Persigny at London. Notwithstanding the courteous tone of the dispatch, feeling ran high in France against England because of the asylum she afforded for political agitators.

Lord Palmerston had been turned out of power when he attempted to secure the adoption of legislation which would prevent Great Britain from offering so unrestricted an asylum to political conspirators against neighboring sovereigns, and when the French Government saw the consequences of this attempt and the outburst of national anger, they were willing to drop the matter and to help Disraeli, who had succeeded Lord Palmerston, by sending the conciliatory dispatch which arrived in time to be read to the House of Commons on its reassembling on March 12, after adjournment.\* As translated, the dispatch reads as follows:

"M. le Comte: The account you give me of the effect produced in England by the insertion on the *Moniteur*

\*See Buckle's *Life of Disraeli*, vol. IV, p. 123.

John Stuart Mill writes Giuseppe Mazzini, February 21, 1858 (*Letters*, vol. I, p. 201), "... When I began writing to you I thought that this country was meanly allowing itself to be made an appendage to Louis Bonaparte's police for the purpose of hunting down all foreigners (and indeed English too) who have virtue enough to be his avowed enemies. But it appears we are to be spared this ignominy; and such is the

of certain addresses from the army, has not escaped my attention, and I have made a report of it to the Emperor. You are aware of the sentiments by which we have been influenced in the steps we have adopted with Her Britannic Majesty's Government on the occasion of the attack of the 14th of January [attempted assassination of Napoleon III], and of the care we have taken, in applying for its concurrence, to avoid everything that could bear the appearance of pressure on our part. All our communications manifest our confidence in its sincerity ('loyauté'), and our deference for the initiative being taken by it; and if, in the enthusiastic manifestations of the devotion of the army, words have possibly been inserted which have seemed in England to be characterized by a different sentiment, they are too much opposed to the language which the Emperor's Government has not ceased to hold that of Her Britannic Majesty, for it to be possible to attribute them to anything else than inadvertence, caused by the number of those addresses. The Emperor enjoins you to say to Lord Clarendon how much he regrets it.

"I authorize you to give a copy of this dispatch to the Principal Secretary of State for Foreign Affairs." (Parliamentary Papers, 1857-8, vol. 60, p. 127 [2317]).

In other instances, an apology is incorporated in a treaty: Great Britain, in Article I of the Treaty of Washington (May 8, 1871), agreeing to submit the Alabama claims to arbitration, expressed her regret "for the escape, under whatever circumstances, of the Alabama and other vessels from British ports and for

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state of the world ten years after 1848 that even this must be felt as a great victory."

To Pasquale Villari, March 9, 1858, he writes in similar vein, and says the Palmerston Ministry was overthrown because of its attempt to drag the nation in the mud and make it a branch of the French police (Ibid, vol. I, p. 202-3).

the depredations committed by those vessels." This expression of regret is very remarkable for the clearness with which it is stated, and since this apology and agreement to arbitrate avoided a serious conflict with the United States, it is most honorable to Great Britain.

The general recognition of the obligation to apologize for any affront to a foreign state or its representatives is illustrated by the following extract from the report of an incident from Wadowice, Galicia, in the *Westminster Gazette*, February 19, 1908:

"Judgment was pronounced to-day in the trial, which began in the District Court here yesterday, of Wanda Dobrodzicka, a young Russian woman charged with having thrown a bomb at General Skallon, Governor-General of Warsaw, on May 18th, 1906.

"The indictment set forth the existence of a very skilfully devised plot to kill the Governor-General. As he very seldom left the castle it was necessary to do something to compel him to come out. Accordingly one of the conspirators, in the uniform of a Russian officer, grossly insulted the German Vice-Consul. It became necessary, therefore, for the Governor-General to pay a personal visit to the Vice-Consul to express his regret, officially, at such an occurrence. This was exactly what the conspirators had reckoned upon, and they laid their plans accordingly. Wanda Dobrodzicka, who was only twenty years of age, was, it was alleged, entrusted with the task of killing the Governor. According to the prosecution, she took up her position on a balcony which he would pass, and when his carriage came she hurled a bomb at it. The bomb, however, failed to explode." (Oppenheim: *International Incidents*, p. 43-4).

An apology freely offered in recognition of a wrong

which is regretted does honor to him who makes it, no less than to him who receives the amend.

### SALUTE OF THE FLAG

Another form of honorable amend is the salute of the national flag. From an official source, we take the following extract from a letter of July 21, 1866, addressed by the commander of the U. S. S. *Nipsic* to the Brazilian Vice-President in the port of Bahia where the seizure of the *Florida* had unjustifiably been made in violation of Brazilian sovereignty and neutrality:

“Sir; The undersigned, commanding the steamer *Nipsic*, has the honor to inform your excellency of his arrival in this port, and to make known to your excellency that the principal object of the visit of the undersigned at this time is to carry out the instruction of the government of the United States to fire a salute of twenty-one (21) guns to the flag of Brazil, and thus to make the ‘amende honorable’ for an offense committed by a United States officer, which was at once disavowed by the government of the United States.

“Ever prompt to do justice, the government of the undersigned, so long ago as October 28, 1865, issued the above instructions, but which, from some irregularity, were sent to Valparaiso, and were only received by the commander-in-chief of the United States squadron on this station on the arrival of the late mail.

“Therefore, if it be agreeable to your excellency, the undersigned will hoist the Brazilian flag at the foremast-head of this vessel, and fire a salute of twenty-one guns, at noon to-morrow, the 23rd instant.

“The undersigned, in executing this duty, begs leave to express to your excellency the undersigned’s sincere hope, that with the dying echoes of the last gun will also expire any unkind feelings that may exist in Bra-

zil from the cause which has given rise to this ceremonial.”

In his answer of the same date, the President of the Province said: “. . . . .and believing in the sentiments which Mr. Francis B. Blake manifests, I have only to assure him that the offended honor of the country having been thus satisfied, not a vestige of resentment can remain against a government which, in so solemn a manner, proclaims to the civilized world that it does not measure the right of the offended to a satisfaction by his power to exact it, but, on the contrary, highly appreciates the just rights of a people which has so well known how to value the close bonds of friendship and consideration which have hitherto attached, and will continue to attach still more, two nations which inhabit the same continent.” (Diplomatic Correspondence, 1866, Part II, p. 317-8; cf. also Moore’s Digest, vol. VII, p. 1090-1).<sup>27</sup>

#### EXPIATORY MISSIONS AND MONUMENTS

An interesting incident occurred in the reign of Queen Anne. In reparation for the arrest of M. Matueof, Peter the Great’s Ambassador, it was found difficult to inflict upon the culprits any adequate punishment.

The laws were acknowledged to be inadequate to the situation. Another method was hit upon, therefore, for affording Russia that undoubted satisfaction which for many months she had been so persistently demanding. In the six weeks’ jubilee following the Tsar’s return from his victorious campaign against Charles

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<sup>27</sup> Another interesting incident illustrating the procedure in such cases is afforded by the Magee Incident between Great Britain and Guatemala.

See E. C. Stowell: *The Magee Incident*, John Byrne and Co., Washington, 1920.

XII, Her Majesty's Ambassador at the Russian Court, specially invested for this single mission with extraordinary and plenipotentiary powers, apologized in open audience in the Queen's name to Peter the Great. Even his words of address were significant. "Most High and Most Potent Emperor!" he began; and continuing after a brief rehearsal of the case, he testified to "the sorrow and the just and high abhorrence" which the Queen had for "that rash deed" against the Russian Ambassador. He begged excuse for the defect and insufficiency of the ancient British Constitution, most instantly desiring that, "entirely putting the same in oblivion," His Tsarish Majesty might "again generously continue" his high affection to the Queen and her subjects.

At the conclusion of this address, which was spoken in English, translations in German and Russian were read in a loud voice. The Ambassador then placed in the Emperor's hands an autograph letter from the Queen, which the Emperor entrusted to his Grand Chancellor before making a brief speech of acknowledgment.

It was on February 9, 1710, at a conference of the Emperor's ministers presided over by this same Grand Chancellor, that suitable conclusions to the whole matter were formulated. It was arranged that M. Matueof, then Ambassador at The Hague, should advise Queen Anne of what had taken place at the Russian Court and of the gracious clemency of the Tsar and of his desire that Her Majesty would pardon the offenders. It was requested, however, that Her Majesty herself write an appropriate letter to M. Mattueof, upon receipt of which—so the arrangement ran—M. Matueof would in due form ask for his letters of recall, which he had not obtained in his haste to leave England some eighteen months before. The ambassador, fur-

ther, was to be reimbursed for all the costs and damages which he had been "obliged to be at, and to suffer, on account of the said affront." And finally, when all these preliminaries had been effected, it was agreed that Peter the Great should acquaint the Queen that he was "content with the foresaid satisfaction." (This account of the Mattueof incident is taken textually from Stowell and Munro: *International Cases*, vol. I, p. 6-7).

After the repression of the Boxer uprising, article I of the conditions contained in the joint note of December 22, 1900, signed by the representatives of the eleven intervening powers, provided for the dispatch of an extraordinary mission to Berlin to express regret for the murder of Baron von Ketteler, the German Minister, and further required the "erection on the place where the murder was committed of a commemorative monument suitable to the rank of the deceased, bearing an inscription in the Latin, German, and Chinese languages, expressing the regrets of the Emperor of China for the murder." And article IV exacted that expiatory monuments be erected "in each of the foreign or international cemeteries which had been desecrated." (*Foreign Relations*, 1900, p. 244; Stowell and Munro: *Cases*, vol. I, p. 114.)

In a note of November 7, 1906, Secretary Root proposed to the Persian Government in regard to the expiation for the murder of one Mr. Laboree: "In like cases, which have occurred elsewhere within recent years, notably in the Chinese Empire, a practical solution of the problem has been found and one which may be followed with singular appropriateness in the present case. It is that the money penalty exacted in punishment of the crime shall be devoted to the erection of a permanent memorial structure, such as a hospital or school, to stand as a monument in reprobation of the



crime and as a beneficent augury of a better state of things to come. Such a memorial building erected in the neighborhood of the murder, with an appropriate inscription, would serve as a lasting lesson in favor of law and order, besides doing a work of good among the Persian people." (Foreign Relations, 1907, Part II, p. 943-4.) It does not appear that this humane suggestion was adopted.

### EXEMPLARY DAMAGES

Rehabilitation may be secured by the exaction of money damages made sufficiently large to indicate the penalizing nature of the payment. Such a payment is comparable to *wergild*, which in the historical development of municipal law was at first an alternative for revenge, but later became an enforced substitute. In the case of injury resulting from loss of prestige, it is impossible to render an exact estimate in money. But since the injury is psychological, and the expiation need only be of such a nature as to satisfy public opinion, exemplary money damages suffice in many instances. There seems to exist a subconscious realization of the advantage of this form of expiation, which maintains peace, and perhaps this influences the community to encourage the pecuniary composition of offences. A similar evolution may be noted in regard to that survival of private warfare—the duel. The necessity of protecting the peace of society from interruptions by private vengeance has led the United States and England, where a sense of social obligation is highly developed, to enforce the prohibition against dueling, and to countenance suits for civil damages for certain offences such as the alienation of a wife's affections. In such instances, private revenge has taken the form of pecuniary claims presented before the tribunals. The same evolution in international relations may have the

effect of replacing forcible measures to redress insults to honor by demands for exemplary damages, the amount of which might be submitted to arbitration. It cannot be said that we have gone very far on this road, but the advantage of the maintenance of peaceful relations which would result from the establishment of such a procedure would be very great, and as the redress to the country's honor is psychological, as has been noted above, money damages could be made to take the place of peremptory demands for salutes or other direct acknowledgments of a fault. When the award resulting from the investigation or arbitration was not made immediately and paid forthwith and considered as a debt of honor, there would be the highest possible justification for immediate recourse to force, and the state so employing force would have behind it the enlightened public opinion of the whole world. The continuation of the same process which led in municipal law to the adoption of *wergild* in place of private revenge should be encouraged in relations between nations.<sup>28</sup>

Certain states which hold their honor lightly may be

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<sup>28</sup>Certain affronts to honor are hard to express in terms of money damages, and in France and Germany it has been customary to settle such matters by duels. But in Anglo-Saxon countries the duel has almost entirely disappeared. French and Germans have been wont to view with contempt what they consider the securing of money damages for injury to a man's personal honor. They have not taken sufficiently into account that the real punishment lies in the condemnation of society. The newspaper publicity given the trial enhances the punishment for any such offense, and a verdict for money damages gives the official seal of the judiciary as proof of the wrong done. But in the case of a duel, the dormant barbaric instincts of mankind are so aroused by the associations gathering about a personal combat, that the dishonorable and sometimes degraded offense is forgotten and is covered over by the romance and glamor of the social respectability of a duel.

more chastened by the exaction of exemplary pecuniary damages than by an abasement, however abject.

It will depend upon circumstances whether a mere apology may be considered efficacious to prevent a repetition of an offense.

When Great Britain, in 1874, insisted that Guatemala must pay damages for the assault upon the British Vice Consul at San José, the Guatemalan Minister for Foreign Affairs, in his note of August 31, replied:

“I regret to have to insist in denying the force of this argument of Lord Derby. My government cannot understand that the injury done by Gonzales to Magee is understood as done to the British nation; and, in granting that it is so, it is surprised to see that your government desires that the honor and dignity of England should be indemnified with money. The question of honor and satisfaction is arranged by the salute to the British flag, stipulated for in Article II of the protocol, as is customary between civilized nations. The honor of these and of their governments cannot be indemnified by money, whatever the sum may be that is offered. National offenses have no price.

“My government, whilst it further considers this point, insists that it owes to yours no indemnity, and with this view, trusts that you will transmit to the proper department the observations contained in this dispatch, in order that, in conformity with the stipulations of the protocol, the negotiations on this point may be opened in a formal manner.”<sup>29</sup>

But when the British representative presented an

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<sup>29</sup>Parliamentary papers, 1875, vol. 82; also, E. C. Stowell: *The Magee Incident*, John Byrne and Co., Washington, 1920.

Compare the incident of 1895 between Great Britain and Nicaragua, when a peremptory demand for an indemnity for treatment of British subjects was enforced by the occupation of Corinto. (*Foreign Relations*, 1895, Part II, p. 1025-1034.)

ultimatum demanding an immediate payment, Guatemala complied.

The inadequacy of an apology which is merely perfunctory is illustrated by the incident which occurred at Lagos, August 18, 1759. British warships violated Portuguese neutrality near the fortress of Lagos, in Algarve, by destroying and capturing the French Squadron which had taken refuge there. The British Government expressed regrets and indicated a willingness to send a special expiatory mission, but refused to punish Admiral Boscawen and resented the intimations of Portugal that the two captured ships should be restored. (Moore's Arbitrations, vol. II, p. 1126-1130.)

#### DISAVOWAL

Since governments do not act directly, but always through the agency of officials, it sometimes happens that the latter exceed their instructions, in which event their government may avoid a certain measure of responsibility by disavowing their acts and by inflicting an appropriate punishment. The apprehensions and even cowardice of governments sometimes lead them to take advantage of this facility to extricate themselves from embarrassing situations, without a very nice regard for the justice of their action towards an officer who has attempted to fulfil their wishes, but in recent times officials are becoming very careful to confine their acts strictly within the limits of their instructions, so that the responsibility devolves upon their government. The consequence is that a disavowal becomes much more humiliating to a government. Nevertheless, it is sometimes indicated as the only escape from disaster.

In the preceding pages we have already referred to several instances in which the acts of officials were

disavowed by their governments: namely in the case of the *Florida's* violation of Brazilian neutrality and in the matter of the offensive statements which had appeared in the *Moniteur*.

#### § 4. INDEMNITY

When the unjustifiable act of a state or the nationals for which it is responsible has injured the material interest of another state, international justice and the maintenance of international peace require that the loss should be made good. The amount recovered for this purpose is generally called an indemnity.<sup>30</sup>

Indemnity covers reparation: that is, the replacing of the injured state in the situation in which it stood before, as when by the articles of Part VIII of the Treaty of Versailles, Germany was required, in as far as her resources would allow, to make provision for the payment of the cost of repelling the unjustifiable attack, including the war losses of the residents of the territory unjustly invaded.

“Compensation” means the making good of the other losses which are not covered by restitution and the restoration of the property to its condition before the war. Such other losses would include that resulting from the deprivation of the use of the property, and the cessation of profit.<sup>30a</sup>

In how far the payment of indirect damages resulting from an international offence may be placed upon

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<sup>30</sup>Indemnity is also used to designate the incidental expenses incurred by a state when it is necessary to employ force for defense or for the vindication of its rights. Used in this sense, indemnity corresponds in international relations to the costs awarded in suits at law.

<sup>30a</sup>In the Delagoa Railway arbitration this question was discussed. See Stowell and Munro: *International Cases*, vol. I, p. 347 *passim*.

the state that has caused the loss is a matter upon which no agreement has been reached.

In a controversy which is not pushed to the ultimate decision of force, the compromise solution which generally settles it does not ordinarily give much consideration to the more indirect or remote consequences of the injurious act. This is equally true when the matter is referred to arbitration, for the arbitrators are bound reasonably to interpret and follow the delegation of authority with which the arbitrating governments covenanted to clothe them.

Thus in the matter of the Alabama claims, the American claims for indirect losses were not allowed.<sup>31</sup> But if war, instead of arbitration, had settled the controversy, there would have been no legal objection to the collection of the indirect losses, provided that the result of the recourse to arms had been sufficiently favorable to the United States.<sup>32</sup> In principle, however, the innocent state that has suffered injury through the fault of another has a right to be saved whole from the harmful consequences of that fault.<sup>33</sup>

#### §5. SECURITY

Redress would be indeed incomplete if there were no guarantee against the repetition of the offense which caused the unjustifiable injury. It is of importance to the injured state, and to the society of states, that such

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<sup>31</sup>Cf. Moore's *Arbitrations*, vol. I, p. 624-646. The action of the arbitration tribunal must be considered as a precedent against the award of indirect damages.

<sup>32</sup>For a discussion of indemnity, see Borchard: *Diplomatic Protection*, §§ 175, 176, 177, p. 416, 419.

<sup>33</sup>Article 1382 of the French Civil Code declares: "Any act by which a person causes damages to another binds the person by whose fault the damage occurred to repair such damage." (Quoted from E. Blackwood Wright: *The French Civil Code*, London, 1908, p. 256.)

reasonable conditions be exacted as will provide security against the commission of another similar offense.<sup>34</sup>

“For,” as Vattel truly says, “a state which has received an injury has the right to provide for its future security by depriving the offender of the means of doing harm.” (Bk. III, ch. III, §45, Carnegie Translation, p. 250.)

In fixing the terms, the avarice and apprehensions of the victor are balanced by compassion and the fear of the intervention of other powers to preserve a healthy disposition of power.

#### § 6. PUNISHMENT

Among the purposes comprehended in the recourse to measures of force is punishment. The principal ob-

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<sup>34</sup>In a letter of October 29, 1870, John Stuart Mill wrote a French correspondent that, in spite of the great sympathy in Great Britain for the misfortunes of France, and the desire that she might come out of them as favorably as the circumstances would allow: “here it is felt that France owes a large reparation to Germany for the great sacrifices of her most precious blood which an unjust aggression have imposed upon her.” (Translated from Mill’s Letters, vol. II, p. 275.)

In a letter of the previous month (September 30), to Sir Charles Dilke, he condemned the French for “one of the wickedest acts of aggression in history,” and considered that the Germans had “a just claim to as complete a security as any practicable arrangement can give against the repetition of a similar crime,” and although he expressed repugnance “to the transfer of a population from one government to another, unless by its own express desire,” he wished he could settle the terms of peace so that “the disputed territory [Alsace and Lorraine] should be made into an independent self-governing State, with power to annex itself after a long period (say fifty years) either to France or to Germany; a guarantee for that term of years by the neutral powers (which removes in some measure the objection to indefinite guarantees), or, if that could not be obtained, the fortresses being meanwhile garrisoned by German troops.” (Letters of John Stuart Mill, 1910, vol. II: p. 274.)



ject of punishment is to protect the community by deterring the culprit and all others from similar offenses. In a more primitive condition of society, crimes are avenged or punished by the victim or his relatives, and the fear of retaliation or the blood-feud acts as a protection to the community against the prevalence of crime. As society developed, the continuation of these feuds became so disturbing to the peace of the community that it was found necessary to subject the procedure to be followed in avenging them to a careful regulation. In the course of time, private revenge has been almost entirely done away with, and the modern state punishes, as we have said, for the security of society. Although the first aim is to protect the community from the repetition of the offense, the reformation of the criminal himself has recently become one of the principal concerns of our system of penal legislation and administration.<sup>35</sup>

The lack of any well defined international organization leaves to the separate member states the punishment of international transgressions. This system of self-enforcement of the law is, as was said above, sometimes called self-help. When a state exacts redress for

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<sup>35</sup>“Where formerly only the accomplished deed was considered, the purpose of punishment is now taken into account. Such purpose is not to inflict a punishment for what has been done, as if in satisfaction of a sentiment of individual or collective vengeance, but to bring about a certain result. The Germans call this aspect of punishment (in contrast to the ‘Vergeltungsstrafe,’ which in the classic view was a punishment by way of compensation or retribution) the ‘Zweckstrafe,’ which we can hardly render more closely than by the phrase, ‘punishment for a purpose.’ Yet the term does scant justice to the important movement inspired by Ihering, and to the significance therein attached to the conception of the final purpose (‘Zweck’), the consideration of which was to reanimate the dead bones of the law.” (Saleilles: *The Individualization of Punishment*, [Translation] Boston, 1911, p. 8-9.)



the injury to its prestige or interests, it protects society by making it certain to all who harbor evil designs that the transgressor will be brought to book.

In a few instances, the states have united to punish some extraordinary crime against their law. The best example of this collective intervention for the purpose of punishing the guilty state is that of China after the Boxer outrages, when the combined forces of the powers occupied Peking and addressed a joint note to the Chinese government. In this note, dated December 22, 1900, and signed by the representatives of eleven states, were set forth the conditions which must be fulfilled before the occupation of Chinese territory by the coöperating states would be terminated,—conditions “which,” so the note ran, “they deem indispensable to expiate the crimes committed and to prevent their recurrence.” (Foreign Relations, 1900, p. 244.)

#### PUNISHMENT OF LESS CIVILIZED NATIONS

In how far it is justifiable and expedient to employ measures of unusual severity against nations that are less mindful of their international obligations is one of the most difficult problems of international law. Lord Elgin has been very severely criticized for burning the Summer Palace in retaliation upon China for her refusal to carry out the treaties she had signed and her treacherous treatment of the British negotiators. Lord Elgin recognized the criticism which his act would arouse, but considered that it was impossible in any other way to bring home to the Chinese the superior force at the command of the Europeans and their ability to command respect for their rights. A more recent example of drastic action was the French bombardment of Casablanca in 1907 in punishment for the treatment of Europeans in that place.

In 1854, when the inhabitants of Greytown insulted the American Minister, a warship was sent to demand redress, and when this was not forthcoming, the naval officer in command, acting on his own responsibility, bombarded and burned down the town. Professor John Bassett Moore gives the following account of this latter incident: "Greytown, a community then lying outside the acknowledged boundaries of Nicaragua, in what was known as the Mosquito Coast, maintained an independent existence under the authority of the Mosquito King, who was understood to enjoy the patronage of the British Government. As the result of a controversy with Nicaragua concerning limits, which involved the question of jurisdiction over Punta Arenas, property belonging to the Accessory Transit Company, an organization of American citizens holding a charter from Nicaragua, was on various occasions seized or destroyed at that point by the Greytown authorities, and for these acts damages were demanded. There was, however, another complaint which was supposed to affect the 'dignity' of the United States. At that time the United States was represented in Central America by a minister named Solon Borland, from Arkansas, a man of spirit who had served in the Mexican War. One day the Greytown authorities attempted to arrest the captain of an Accessory Transit steamer, then lying at Punta Arenas, when Mr. Borland happened to be aboard. The captain resisted, and in the scrimmage that ensued, Mr. Borland seized a musket and gave to the captain successful support. Great excitement ensued at Greytown; and it was presently fanned to a flame by the announcement that Mr. Borland intended to call upon the resident United States commercial agent in the evening. A suggestion from the latter that this visit be considerately omitted, Mr. Borland, his blood still up, scornfully rejected; and

while he was in the agent's house, a violent commotion in the street denoted the presence of a mob. Mr. Borland, nothing daunted, promptly appeared in the gallery and warned the tumultuous assemblage to disperse. But his oratory was suddenly checked by a blow in the face from a bottle, thrown by some one in the crowd, who, after draining from the flask the last inspiring drop, used it as a missile. For the redress of these accumulated grievances, Captain Hollins, of the U. S. S. *Cayane*, was dispatched to Greytown. Lacking specific instructions as to procedure, he made upon the local community demands which it was either unwilling, or unable, or without adequate opportunity to meet, and, the time limit having expired, first bombarded and then burned the town, utterly destroying it. This somewhat fierce and drastic punitive measure created a sensation throughout the civilized world. I have in my collections a pamphlet on the case, published in France, on the cover of which is an arm uplifted in vengeance and bearing an incendiary torch." (Political Science Quarterly, 1915, vol. XXX, p. 390-2, quoted in Stowell and Munro: International Cases, vol. I, p. 119-121.)

In view of the many instances in which bombardment and drastic measures have been employed, it is hard to deny that there is a presumption of legality in their favor. Nevertheless, such brutality seems to be in conflict with the humanitarian principles which govern all nations in their relations with one another. A French work on the law of nations expressed the opinion that it will rarely be found that a nation capable of profiting from such lessons will incur the risk of receiving them. (See Funk-Brentano et Sorel: Droit des Gens, p. 229-230.)

When the territorial sovereign is too weak or is unwilling to enforce respect for international law, a state

which is wronged may find it necessary to invade the territory and to chastise the individuals who violate its rights and threaten its security. Our relations with Mexico afford many instances of such expeditions, generally spoken of as punitive expeditions.

Whenever it is possible to inflict directly upon the individuals who are responsible the punishment they deserve for the violation of international law, the ends of justice will be better served. When an entire people is made to suffer for some delinquency for which it is indirectly responsible through the action of its officials, a deep feeling of resentment may be engendered, while the very individuals who are responsible may escape the penalty calculated to restrain others from a like offense. Ordinarily, of course, the government responsible will be expected to punish the officials guilty of the violation, and when it is too weak to undertake this task, the injured government may, as has been said above, coöperate by having recourse to measures of self-help. There are many such instances of punitive expeditions to punish guilty individuals.<sup>36</sup>

When the offenders are officials of the government or when a government assumes the responsibility for the offenses by preventing punishment, the punitive expedition must be directed against the governmental authorities. An interesting case occurred in Central

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<sup>36</sup>An account of the instances in which the United States has considered it necessary to punish less civilized communities for outrages against American citizens will be found in the memoranda prepared by Solicitor J. R. Clark of the Department of State, October 5, 1912, entitled, "Right to Protect Citizens in Foreign Countries by Landing Forces." The incident of the Falkland Islands in 1831 (see above § 1, and Moore's Digest, vol. V, p. 878 f.) affords an excellent example of a just retribution which was inflicted with the most scrupulous regard to the rights of the government claiming to be sovereign. The firmness and moderation with which the culprits were punished deserves commendation.

**America.** President Zelaya of Nicaragua summarily executed, December 17, 1909, two Americans, Groce and Cannon, who had participated in a revolt against his authority.

Partly in consequence of this rash and lawless act, Secretary Knox, in a note dated December 1, informed the representative of Nicaragua that "the President no longer feels for the Government of President Zelaya that respect and confidence which would make it appropriate hereafter to maintain with it regular diplomatic relations, implying the will and the ability to respect and assure what is due from one state to another." And the representative was informed that his passport was enclosed, for use in case he desired to leave the country (Foreign Relations, 1909, p. 456, *passim*.)

Thereafter Zelaya's position in Nicaragua became untenable, and he was forced to flee to Europe.

Still more recently, after the Villa raid on Columbus, President Wilson ordered a punitive expedition into Mexican territory to capture the bandit. Upon the protest of Mexico the expedition was withdrawn. (See J. B. Moore: Principles of American Diplomacy, p. 227 f.)

The principle of personal responsibility is recognized by the stipulations of the Versailles Peace Treaty of June 28, 1919, which makes provision for the trial of ex-Emperor William and other German officials accused of responsibility in undertaking the war and of violations of international law in the course of the conduct of military operations (Articles 227-230).

#### RESTRAINING INFLUENCE OF PUNISHMENT

The restraining influence which any punishment will have upon the offender and upon others is one of those psychological factors which defy analysis and, in

the absence of an international code, there is no measure of the degree of punishment which is reasonable to effect the object in view. Whenever public opinion is aroused over some flagrant transgression, the popular demand for revenge or satisfaction influences responsible statesmen to seek a punishment in excess of that which would be necessary to prevent a repetition of the offense. Because of this lack of regulation in international affairs, the Law of the Talion, or retaliation, is widely applied. The fear of redress or reprisals is ever present to those who conduct international affairs, although it is difficult to estimate the importance of this influence in any particular instance. But as this relates more to means and methods we cannot discuss it here.

In international, as in national affairs, there are certain minor offenses for which it is difficult to impose a sufficiently severe restraining punishment without making the penalty out of all proportion to the offense. In such cases, it is essential to take action by way of anticipation to prevent the commission of the injury, or quickly to compel the offender to desist. Action taken for such a purpose is more in the nature of police administration or international police patrol.

## CHAPTER II

### INTERNATIONAL POLICE<sup>1</sup>

#### § 7. COUNTER-INTERVENTION<sup>2</sup>

In every community whose conduct is in any measure controlled by law—and in the absence of law there can be no community—provision must be made for the effective enforcement of the law. Before the establishment of a special constabulary entrusted with its enforcement, we usually find that every member is expected himself to seek redress for the injuries which he may have received. Sympathy of public opinion is the most that he is entitled to expect from those not immediately concerned, except when some outrageous crime arouses the whole community to action. But even in matters of less serious import, the collective action of the community makes itself felt in the insist-

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<sup>1</sup>The meaning of "international police" is more fully considered below, § 9. Here we need only note that it is used in the sense of justifiable action to enforce a compliance with the provisions of international law.

<sup>2</sup>"Interposition" is more generally in use than "counter-intervention," but since "interposition" has lately been adopted as the term to cover action of a government undertaken in defense of the rights of nationals, it will be preferable to avoid confusion by employing "counter-intervention." Whenever a state justly intervenes to oppose an unjustifiable interference, "intermeddling" may be used to designate unjustifiable interference, which is an attempt to prevent other states from settling their own affairs in their own way. Hall uses "counter-interference" (Hall: *International Law*, 4 ed., § 93, p. 306). Creasy uses "counter-intervention" (Creasy: *First Platform*, p. 306; cf. Rougier: *Guerres Civiles*, § 80, p. 338).

ence that the parties shall observe the recognized forms of procedure. Such a system of procedure for the enforcement of law is certainly expeditious and inexpensive for the community, but it is apt to leave insufficiently protected matters of general concern, especially in those instances when no one state is sufficiently interested to undertake alone the burden of the enforcement of the law. A still more serious defect of this system is that it leaves the weak without the means to bring the strong transgressor to justice.

In the society of nations there still exists, as we have seen, no organized constabulary, and each nation is expected to take what action it may find justifiable and expedient to secure redress for whatever injury another may have done it. Under present conditions, this procedure has many advantages, and in any event it is the only method practicable until the sovereign states shall be ready to give up a larger measure of the freedom of their action, and establish a more perfect organization.

In the meantime, international law must depend mainly upon interposition, that is, the action of the separate states to secure redress for their own injuries. Whenever a separate state acts for this purpose, it will also vindicate international law, and help to secure for it the respect it deserves. In practice this system is found to work very well. The explanation is simple—each one of the really independent states has been able to maintain this proud position only by the fact of its ability to interpose effectively to secure redress whenever any of its international rights were injured. In the case of an independent state too weak itself to interpose for the redress of its own injuries, there must have been some powerful and friendly state so interested in the maintenance of the weaker state's nominal independence as to be ready to coöperate with the lat-



ter to help it secure redress. In those other instances of general concern when no state is sufficiently interested to undertake an intervention for the purpose of vindicating international law, or when a friendless injured state is so conspicuously inferior in strength as to make such action impossible, international law recognizes the right and the obligation of all the other states to coöperate to vindicate the law of nations.<sup>3</sup> This principle is, however, not so generally recognized as it should be. There are not a few writers of first authority who deny it altogether.<sup>4</sup> The confusion

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<sup>3</sup>“Third states,” writes Westlake, “may therefore step in, in support of justice or of their interests so far as consonant with justice.” (International Law, vol. I, p. 320; cf, *ibid*, p. 317.)

Hall expresses the same opinion: “When a state grossly and patently violates international law in a matter of serious importance, it is competent to any state, or to the body of states, to hinder the wrongdoing from being accomplished, or to punish the wrongdoer. Liberty of action exists only within the law. The right to it cannot protect states committing infractions of law, except to the extent of providing that they shall not be subjected to interference in excess of the measure of the offence; infractions may be such as to justify remonstrance only, and in such cases to do more than remonstrate is to violate the right of independence. Whatever may be the action appropriate to the case, it is open to every state to take it. International law being unprovided with the support of an organized authority, the work of police must be done by such members of the community of nations as are able to perform it.” (Hall: International Law, 4 ed., 1895, § 12, p. 57-8; cf. Oppenheim: International Law, 2 ed., vol. I, § 9, p. 13; Lorimer: Institutes of the Law of Nations, vol. I, p. 10; Lawrence: Principles, 4 ed., 1910, § 64, p. 127; Sheldon Amos: Political and Legal Remedies for War, p. 187-8; Vattel: The Law of Nations, Introduction, § 22, Carnegie Translation, p. 8; *ibid*. II, ch. I, § 4, p. 114); Stapleton: Intervention, p. 125; Rossi (*Archives de droit et legislation*, 1837, vol. I, p. 372.)

<sup>4</sup>Woolsey, discussing “.....whether a state is bound to aid other states in the maintenance of general justice,” although he himself recognizes the obligation of coöperation, writes:

arises principally, I believe, from the failure to remember that the recognition of the obligation to intervene for the vindication of international law still allows every independent state to exercise its sovereign right of decision as to when and how its obligation shall be fulfilled. In international relations, it is not possible to place upon independent states the same requirement to help in the enforcement of law as we recognize to rest upon each citizen in municipal law.<sup>5</sup> In our national or municipal law, every citizen is expected to respond to the summons of the sheriff and risk his life in helping to enforce the law. But he has behind him for his protection an organized force able to avenge him if injured, and to punish him if he refuses to comply. Fur-

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“The prevalent view seems to have been that, outside of its own territory, including its ships on the high seas, and beyond its own relations with other states, a state has nothing to do with the interests of justice in the world. Thus laws of extradition and private international law are thought to originate merely in comity. Thus, too, crimes committed by its own citizens abroad it is not bound to notice after their return home. Thus, again, contraband trade is held not to begin within the neutral's borders, and outside of them, as on the high seas, concerns the belligerent alone. And again, when a nation commits a gross crime against another, third parties are not generally held to be bound to interfere. This is the most received, and may be called the narrow and selfish view.” (Woolsey: *International Law*, § 20-b, 5th ed., 1878, and later editions. It is interesting to observe how in his first edition, 1860, Woolsey had not yet reached so firm a conviction as to the obligation to intervene in support of international law.)

<sup>5</sup>In the continuation of the extract from Hall which we have given in a preceding note, that author states: “It is however for them [the intervening states] to choose whether they will perform it or not. The risks and the sacrifices of war with an offending state, the chances of giving umbrage to other states in the course of doing what is necessary to vindicate the law, and the remoter dangers that may spring from the ill-will produced even by remonstrance, exonerate countries in all cases from the pressure of a duty.” (Hall: *International Law*, 4 ed., 1895, § 12, p. 58.)

thermore, the life of one individual is of small moment in the community, provided the correct principles prevail for the guidance of all men. For a nation, the conditions are not comparable. The force on the side of law may temporarily be less than the might arrayed against it, and there is no machinery to compel any state to incur the burden of enforcing the law. Civilization might not be best served if the states which had reached the highest degree of development should lightly risk the fruits of their culture whenever their common law was violated.

Even though the other states may be slow to intervene with arms to vindicate the law of nations when their national interests are not sufficiently involved, the transgressor is sure to incur the efficacious penalty of discrimination from other states. Of small effect in each isolated instance, the sum total of all the discriminations of all the states will weigh heavily against the transgressor.

Governments usually go as far in enforcing the law as public opinion will support. It is therefore necessary to educate the public, first, as to the nature of international law, and, second, as to the obligation their state is under to make greater sacrifices to insure its enforcement. Under present conditions the obligation to intervene for the vindication of the law cannot be made absolute, but must be left to the discretion of each state. Reasonable action by way of remonstrance and discrimination will generally be taken in support of the innocent, as opposed to the transgressor. Occasionally a government will go further and intervene by force of arms for the vindication of the law. Such intervention is legal. It is commendable, but it must be confessed that it has generally been actuated by political considerations. The enforcement of the law is, to say the truth, never far removed from politics. Even

in our local affairs we are careful to place the enforcement of the law in the hands of political appointees or of officials elected at the polls, and it would not be difficult to furnish a long list of instances where political considerations have prevented the law from being enforced.

In international affairs, the enforcement of law usually waits until some powerful state is sufficiently interested to have it vindicated. But the interests of the great states are now so widespread that it will rarely happen that not one will be found to demand the enforcement of the law; and in this way the motive of self-interest has now become still more potent to keep the actual system working in a manner reasonably satisfactory.

#### RESISTANCE TO THE ENFORCEMENT OF LAW

The recognition of the right to employ force to vindicate the law carries with it necessarily a corresponding obligation on the part of all the nations not to interfere with the recognized and orderly procedure for the enforcement of the law. Consequently, any state that has been guilty of a wilful violation of the law of nations in its refusal to make adequate redress has no right to resist such reasonable force as may be necessary to vindicate the law and obtain redress. Although we can hardly expect that a government which refuses to recognize its transgression, and to make amends, will refrain from offering such resistance as it may have in its power, this principle of the illegality of resistance to force lawfully employed for the vindication of international law is incontrovertible.<sup>6</sup> Vattel well says:

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<sup>6</sup>“The right of protection over citizens abroad, which a state holds, may cause an intervention by right to which the other party is legally bound to submit. And it matters not whether protection of the life, security, honor, or property of a citizen

“Defensive war is just when it is carried on against an unjust aggressor. That needs no proof. Self-defense against an unjust attack is not only a right which every nation has, but it is a duty, and one of its most sacred duties. But if the enemy, in carrying on an offensive war, has justice on his side, the nation has no right to resist, and defensive war is then unjust. For the enemy is only acting on his right; he has taken up arms to obtain justice which was refused him; and it is an act of injustice to resist one who is exercising his right.

“The only thing left to do in such a case is to offer due satisfaction to the invader. If he is unwilling to accept it, the state has the advantage of having won over justice to its side, and it may thenceforth justly resist his attack, which has now become unjust, since the grounds for it are removed.” (Vattel: *The Law of Nations*, Bk. III, ch. II, §§ 35, 36, Carnegie Translation, p. 246.)

#### § 8. HUMANITARIAN INTERVENTION

Intervention for humanity, or humanitarian intervention' as it is more properly called, is also an instance of intervention for the purpose of vindicating the law of nations against outrage. For it is a basic principle of every human society and the law which governs it that no member may persist in conduct which is considered to violate the universally recognized

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abroad is concerned.” (Oppenheim: *International Law*, 2 ed., 1912, vol. I, § 135, p. 192.)

'This is the expression used by Hall (4 ed., p. 304). “Humanitarian,” “for humanity” and “on the ground of humanity” are in general use. Moore (Digest, vol. VI, p. 3) uses removal of “abhorrent conditions.” “Against immoral acts” is sometimes employed.

principles of decency and humanity.<sup>8</sup> In our national law, the offender is arrested and punished for disorderly conduct. In certain associations he would be expelled, but international society cannot so easily be rid of the culprit. It is necessary either to assume the

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<sup>8</sup>That the flagrant and persistent violation of the recognized principles of humanity is a violation of international law, as well as of international morality, is indicated by the preamble of the Hague Convention Respecting the Laws and Customs of War on Land, which declares: "Until a more complete code of the laws of war is issued, the high contracting parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience."

The presumption in favor of the rectitude and legality of the action of the sovereign will not be impaired by an occasional abuse and instance of inhumane action. We must admit that international law does not afford any machinery for correcting such occasional abuses. In the absence of an effective sanction under international law to remedy these occasional abuses, we might not be justified in classing them as violations of international law. They are, nevertheless, violations of international morality. The example indicates the important distinction which must always be drawn between international morality, which is a matter left to the conscience of the separate states and to the citizens responsible for the government's conduct, and international law, which is law because there exists an effective procedure which is generally employed to enforce it.

Rougier, in his interesting study of humanitarian intervention, considers that it is necessary to find a law for the enforcement of which intervention is undertaken (*Revue generale*, 1910, vol. 17, p. 478), and he finds this law in the solidarity of mankind. It is much simpler and more in accord with the fundamental principles to recognize that such cases of intervention are instances in which international law is being enforced, since international law includes certain universally recognized rules of decent conduct in the treatment of human beings, and guarantees to them a minimum of rights. This question is more fully discussed hereafter.

burden of the administration of the territory, or to constrain the unworthy sovereign to mend his ways.

Professor Arntz saw this clearly and recognized as one of two grounds justifying intervention in the internal affairs of another state the situation when its institutions "make impossible the regular coexistence of the states" (*Revue internationale*, 1876, vol. 8, p. 674). The importance of humanitarian intervention and the inadequate consideration which it has received oblige us to enter into a somewhat full discussion of the principles as indicated by the practice of states.

Humanitarian intervention may be defined as the reliance upon force for the justifiable purpose of protecting the inhabitants of another state from treatment which is so arbitrary and persistently abusive as to exceed the limits of that authority within which the sovereign is presumed to act with reason and justice.<sup>9</sup>

Westlake states the basic idea of humanitarian intervention and at the same time refutes the sterile doctrine of absolute non-intervention: "In considering

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<sup>9</sup>Rougier defines intervention on the ground of humanity as follows: "The theory of intervention on the ground of humanity is properly that which recognizes the right of one state to exercise an international control over the acts of another in regard to its internal sovereignty when contrary to the laws of humanity. It applies also to the effort to place this action upon a juridical basis." (Translated from *Théorie de l'intervention d'humanité*; *Revue générale du droit international* 1910, vol. 17, p. 472.)

Professor Arntz gives the following definition: "When a government, although acting within its rights of sovereignty, violates the rights of humanity, either by measures contrary to the interests of other States, or by an excess of cruelty and injustice, which is a blot on our civilization, the right of intervention may lawfully be exercised, for, however worthy of respect are the rights of state sovereignty and independence, there is something yet more worthy of respect, and that is the right of humanity or of human society, which must not be outraged." (Translation taken from F. W. Payn: *Cromwell on Foreign Affairs*, p. 72. The French original will be found in *Revue du droit international*, 1876, vol. 8, p. 675.)



anarchy and misrule as a ground for intervention the view must not be confined to the physical consequences which they may have beyond the limits of the territory in which they rage. Those are often serious enough, such as the frontier raids in which anarchy often boils over, or the piracy that may arise in seas in which an enfeebled government can no longer maintain the rule of law. The moral effect on the neighboring populations is to be taken into the account. Where these include considerable numbers allied by religion, language or race to the populations suffering from misrule, to restrain the former from giving support to the latter in violation of the legal rights of the misruled state may be a task beyond the power of their government, or requiring it to resort to modes of constraint irksome to its subjects, and not necessary for their good order if they were not excited by the spectacle of miseries which they must feel acutely. It is idle to argue in such a case that the duty of the neighboring peoples is to look on quietly. Laws are made for men and not creatures of the imagination, and they must not create or tolerate for them situations which are beyond the endurance, we will not say of average human nature, since laws may fairly expect to raise the standard by their operation, but of the best human nature that at the time and place they can hope to meet with." (Westlake: *International Law*, vol. I, p. 319-320.)

President Roosevelt in 1904 wrote: "Brutal wrongdoing, or impotence, which results in the general loosening of the ties of civilized society may finally require intervention by some civilized nation, and in the Western Hemisphere the United States cannot ignore its duty." (J. B. Moore: *Principles of American Diplomacy*, p. 262; cf. similar statement in Roosevelt's *Annual Message*, December 6, 1904.)

Similarly, that great political thinker, Captain Ma-



han, referring to the parable in the Bible, wrote: "that the possession of power is a talent committed in trust, for which account will be exacted; and that, under some circumstances, an obligation to repress evil external to its borders rests upon a nation, as surely as responsibility for the slums rests upon the rich quarters of a city." (Mahan: *Some Neglected Aspects of War*, 1900, p. 107.)

The legality of humanitarian intervention has the support of many authorities. The author of the *Vindicae Contra Tyrannos*, published in 1579 at the time of the religious wars in France, justifies interference "in behalf of neighboring peoples who are oppressed on account of adherence to the true religion or by any obvious tyranny" (W. A. Dunning: *Political Theories from Luther to Montesquieu*, p. 55). Since that time, a host of authorities have incidentally touched upon humanitarian intervention and recorded their approval of it. Only one of these, as far as I am aware, has made a thorough study of this important institution.<sup>10</sup> The list of the authorities who recognize the legality of humanitarian intervention includes: Grotius, Wheaton, Heiberg, Woolsey, Bluntschli, Westlake, and many others.<sup>11</sup>

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<sup>10</sup>Antoine Rougier: *La théorie de l'intervention d'humanité*, *Revue générale*, 1910, vol. 17, p. 468-526.

<sup>11</sup>For the convenience of the student, we have listed here some of the more important references to these expressions of opinion. Some of them will be found also quoted in the pages of this volume: Grotius, Bk. II, ch. XX, XL; Vattel, Bk. II, § 56 (but cf. *Ibid*, §§ 7, 55); Heiberg: *Nichtintervention*, p. 14-15; K. von Rotteck (see H. von Rotteck: *Einmischungsrecht*, p. 11, 36); Heffter: *Völkerrecht*, § 45; Woolsey: *International Law*, 1 ed., 1860, § 42, p. 91; *Ibid*, § 50, p. 111-112; Woolsey, 6 ed., § 43, p. 45, paragraph two; *Ibid*, § 51, p. 55; *Ibid*, § 116, p. 178, last paragraph; *Ibid*, § 20 a, p., 19; Bluntschli: *Völkerrecht*, § 478, note, § 471 and note; Arntz and Rolin-Jacquemyns: in *Revue de droit international*, vol. 8, 1876, p. 675; Creasy: *First Platform of International Law*,

In 1625 Hugo Grotius wrote: "There is also another question, whether a war for the subjects of another be just, for the purpose of defending them from injuries inflicted by their ruler. Certainly it is undoubted that ever since civil societies were formed, the rulers of each claimed some especial right over his own subjects. Euripides makes his characters say that they are sufficient to right wrongs in their own city. And Thucydides puts among the marks of empire, the supreme authority in judicial proceedings. And so Virgil, Ovid, and Euripides in the *Hippolytus*. This is, as Ambrose says, that *peoples may not run into wars by usurping the care for those who do not belong to them*. The Corinthians in Thucydides say that it is right that each state should punish its own subjects. And Perseus says that he will not plead in defense of what he did against the Dolopians, since they were under his authority and he had acted upon his right. But all this applies when the subjects have really violated their duty; and we may add, when the case is doubtful. For that distribution of power was introduced for that case.

"But the case is different if the wrong be manifest. If a tyrant like Busiris, Phalaris, Diomedes of Thrace, practises atrocities towards his subjects, which no just

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§ 308, p. 297; Hall: *International Law*, 4 ed., § 92, p. 302-3 (Hall bears unwilling testimony. Cf. *Ibid*, § 92, p. 302-3); Sheldon Amos: *Political and Legal Remedies for War*, p. 158; T. S. Woolsey: *America's Foreign Policy*, p. 75-6; E. J. Phelps, formerly American Minister to England, in the *New York Herald*, March 28, 1898; W. E. Lingelbach: *Intervention in Europe*, in *Annals of the American Academy of Political and Social Science*, July, 1900, vol. 16, p. 25; A. Pillet: *Principes de droit international privé*, Paris, 1903, p. 171; Rivier: *Principes*, vol. I, p. 256; Kebedgy: *Intervention*, p. 78 f.; A. Rougier, in *Revue générale du droit international public*, vol. 17, 1910, p. 475, *passim*; Hodges: *Intervention*, p. 91 f.

man can approve, the right of human social connection is not cut off in such a case. So Constantine took arms against Maxentius and Licinius; and several of the Roman emperors took or threatened to take arms against the Persians, except they prevented the Christians being persecuted on account of their religion.” (Grotius: *De Jure Belli et Pacis*, Bk. II, chap. XXV, VIII, §§ 1, 2, Whewell’s Translation, Vol. II: p. 438-440.)

In a recent work by Professor Edwin M. Borchard, we find a clear and emphatic statement. Referring to the minimum of rights which individuals enjoy under international law, this author remarks: “This view, it would seem, is confirmed by the fact that where a state under exceptional circumstances disregards certain rights of its own citizens, over whom presumably it has absolute sovereignty, the other states of the family of nations are authorized by international law to intervene on the grounds of humanity. When these ‘human’ rights are habitually violated, one or more states may intervene in the name of the society of nations and may take such measures as to substitute at least temporarily, if not permanently, its own sovereignty for that of the state thus controlled.” (Edwin M. Borchard: *The Diplomatic Protection of Citizens Abroad*, New York, 1915, p. 14.)

After the reader has examined the instances which we shall present, he can hardly fail to agree with the conclusion of Professor Theodore S. Woolsey, who studied this question in relation to the intervention of the United States in Cuba. Mr. Woolsey writes: “That intervention on the ground of humanity is justifiable is a matter of precedent, then, as well as a theory. And so far as facts go, our action in behalf of Cuba is as fair an instance of it as any of the earlier exam-

ples.” (Theodore S. Woolsey: *American Foreign Policy*, New York, 1898, p. 75-6.)

Certain other publicists have, it is true, looked askance at humanitarian intervention, and even gone so far as to deny its legality.<sup>12</sup> Starting from the premise of the independence of states, they fear to recognize the right of another state to step in as a policeman, even though a neighbor state should treat its nationals in a barbarous manner. Instead, they would proclaim as sacred and inviolable the right of every state to regulate its internal affairs and then condone as excusable violations of the law such corrective inter-

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<sup>12</sup>Among the authorities who deny the legality of humanitarian intervention are the following: Angelius Werdenhagen (according to Esmein's statement in *Nouvel revue historique de droit français et étranger*, vol. 24 (1900), (p. 574), in his criticism of the work of Bodin; Vattel: Bk. II, §§ 7, 55. (But cf. Ibid, § 56.) Nassau Senior, in 1843, discussing the rights of subjects against their princes, declares, “According to modern international law, it appears to be doubtful whether a nation has any rights against its sovereign; it is certain that, if it had any, they are rights which no third party is justified in supporting.” (Edinburg Review, April, 1843, vol. 156, p. 365. On the following page (p. 366) Senior criticizes the manner in which the plea of humanity is made to cloak selfish designs.) See also, Phillimore: *Commentaries*, 1 ed., 1854, vol. I, § 394, p. 441-2; (It is hard to discover Phillimore's real opinion). Mountague Bernard: *Non-Intervention*, p. 16-20; Halleck: *International Law*, ch. IV, § 9, p. 86-7; ch. XIV, § 21, p. 340 (quotes Phillimore, but recognizes the influence of humanitarian considerations); Strauch: *Interventionslehre*, p. 13-14; Gareis: *Institutions des Völkerrechts* (1888), § 26, p. 84; Funk-Brentano et Sorel: *Précis*, p. 223; Rougier, who affirms the existence of a legal right of humanitarian intervention, nevertheless remarks upon the danger with which it is beset. He writes: “It must be recognized that the ground of humanity is the most delicate of the causes which may be expected to justify the right of intervention and that it raises juridical difficulties in regard to the basis and the extent of this right.” (Translated from A. Rougier: *Théorie de l'intervention d'humanité*, *Revue générale*, vol. 17 (1910), p. 478.)

vention as another state, urged on by public opinion, might undertake.<sup>13</sup>

But why, we may ask, should the independence of a state be more sacred than the law which gives it that independence? Why adopt a system which makes it

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<sup>13</sup>It may be of interest to the reader to refer to the authors who deny the legality of humanitarian intervention in law, but who condone it to a greater or less degree in practice.

In the first place, there is Vattel, whom we have given in the preceding note as an authority opposed to the legality of intervention on the ground of humanity: yet we might transfer him to the opposite camp, for he no sooner denies the right ".....to force him [the erring sovereign] to follow a wiser and juster course," than he adds, "Prudence will suggest the times when it [a foreign state] may interfere to the extent of making friendly representations." (Vattel, Bk. II, § 55, Carnegie translation, p. 131). But as a diplomat and practical man of affairs, Vattel must have known that such "representations" are always irritating, and hence not made unless there is the possibility which may become a probability that they will be followed up by stronger measures. Consequently, we must consider this remark to be either without significance, or a justification of humanitarian intervention when it can be undertaken in such a manner as to be beneficial and effective, and this qualification is always understood as limiting every obligation to undertake intervention. What Vattel says in regard to the right to intervene in a civil war (Bk. II, § 56, Carnegie translation, p. 131) may also be regarded as a qualification of his denial of humanitarian intervention.

In a list of the alleged grounds of intervention which Professor Bernard puts in the form of interrogations, he asks, "May intolerable scandals to public morality, heinous crimes against humanity and justice, obstinate and fruitless civil wars, authorize great powers to step in and assume, for the public good, a kind of police jurisdiction over the offending state?" (Non-Intervention, p. 24.) But instead of a categorical answer, Bernard only gives us some general observations which apply to all the grounds of intervention. If we combine what Bernard says on pages 7 and 24, we find that he admits that there may, no doubt, be cases in which the principle that states are members of a community united by a social tie ought to prevail over the principle that states are severally sovereign or independent. Yet, with apparent lack of consistency, he argues, "...but the more closely we examine the

necessary to gloss over constant violations of the very principles which are declared to be most worthy of respect from all? If, where such intolerable abuses do occur, it be excusable to violate at one and the same

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matter, the clearer, I think, will be our conviction that the first and highest interest of the great commonwealth of States itself is the independence of its several members, the stronger our reluctance to admit exceptional cases." (Ibid, p. 24.)

In another place where Bernard discusses the alleged benefits of intervention, he declares, "But, in fact, good is hardly ever done by it—good, I mean, in any degree commensurate with the evil. On the contrary, even when it dethrones a tyrant, puts an end to a ruinous anarchy, or stanches the effusion of blood, in a civil war it has a direct tendency to produce mischief worse than it removes." (Ibid, p. 9.)

Now, on the whole, this would seem to be a condemnation and denial of the legality of humanitarian intervention. Yet Bernard indicates that he does not mean to apply his remarks to states . . . . . "which labor under an incurable incapacity to govern." (Ibid, p. 7.) Now since it is in the case of such states that humanitarian intervention is usually applied, this concession robs Bernard's statement of much of its force.

Sir Vernon Harcourt must probably be classed as one of the authorities who adopts the doctrine of moral justification, for in his discussion of intervention, he declares: "Intervention is a question rather of policy than of law. It is above and beyond the domain of law, and when wisely and equitably handled by those who have the power to give effect to it, may be the highest policy of justice and humanity." (Historicus: Letters on Some Questions of International Law, 1863, p. 14.)

Hall (4 ed., § 92, p. 302-5; also p. 307-8) must probably be classed as an authority who denies the right of humanitarian intervention, but he seems to admit that the weight of authority and the practice of states is at variance with his views. He implies (p. 304) that even had his view been adopted, intervention would be legal when "the whole body of civilized states have concurred in authorizing it." That is to say, in order to avoid abuse, he would restrict certain classes of intervention, including that for humanity, to instances when they were undertaken by the collectivity of the more important powers. Any intervention undertaken by a separate power would then, he thinks, have had to be justified "...as measures which being confessedly illegal in themselves, could only be excused in rare and extreme cases in consideration of the unquestionably extraordinary character of the facts caus-



time the independence of a neighbor and the law of nations, can such a precedent of disrespect for law prove less dangerous to international security than the recognition of the right, when circumstances justify, to ing them, and of the evident purity of the motives and conduct of the intervening state."

But even this qualification is not left unqualified, for Hall seems to take back what he has said. A few pages further along (§ 95, p. 308), he writes, "There is fair reason, consequently, for hoping that intervention by, or under the sanction of, the body of states on grounds forbidden to single states, may be useful and even beneficent. Still, from the point of view of law, it is always to be remembered that states so intervening are going beyond their legal powers. Their excuse or their justification can only be a moral one." When the master becomes thus involved in contradiction, I submit that there is, to use his own expression, "...fair reason..." to consider that he has attempted to defend a bad cause.

We catch a reflection of Hall's errors in Oppenheim's discussion of humanitarian intervention (International Law, 2 ed., vol. I, p. 194-5). After admitting "that the Powers have in the past exercised intervention on these grounds [humanity], there is no doubt," he asserts, that it "may well be doubted..." "...whether there is really a rule of the Law of Nations which admits such interventions." "Yet," he adds, "on the other hand, it cannot be denied that public opinion and the attitude of the powers are in favor of such interventions....." In a footnote, he refers to Hall (§§ 91 and 95), "where the merits of the problem are discussed from all sides." § 91 is probably an error for § 92.

Lawrence: Principles of International Law, 4 ed., § 66, p. 129, has stated this doctrine so persuasively as almost to overcome its inconsistency. He writes:

"Should the cruelty be so long continued and so revolting that the best instincts of human nature are outraged by it, and should an opportunity arise for bringing it to an end and removing its cause without adding fuel to the flame of the conflict, there is nothing in the law of nations which will brand as a wrongdoer the state that steps forward and undertakes the necessary intervention. Each case must be judged on its own merits. There is a great difference between declaring a national act to be legal, and therefore part of the order under which states have consented to live, and allowing it to be morally blameless as an exception to ordinary rules. A state may, in a great emergency, set aside everyday re-

ignore that independence which is the ordinary rule of state life? In any event, we find support for the view we hold from the weighty authorities to whom we have referred, and we may feel still more certain of our ground after we have examined the various instances in which the powers have intervened to prevent a neighbor from continuing to commit such abuses as constituted a violation of the universally recognized and generally respected rules of decent state conduct. And when so acting, the intervening states have proclaimed the legality of their course.

States have most frequently undertaken intervention wholly or partially on the ground of humanity in some one of the circumstances which we shall now pass in review.<sup>14</sup>

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straints; and neither in its case nor in a corresponding case of individual conduct will blame be incurred. But, nevertheless, the ordinary rule is good for ordinary cases, which, after all, make up at least ninety-nine hundredths of life. To say that it is no rule because it may laudably be ignored once or twice in a generation, is to overturn order in an attempt to exalt virtue. An intervention to put a stop to barbarous and abominable cruelty is 'a high act of policy above and beyond the domain of law.' "

<sup>14</sup>Perhaps we should here refer to another attempt to discover a satisfactory basis for recourse to humanitarian intervention: The doctrine of "international nuisance" is built upon the analogy of the common law right to remove a nuisance. In his "Principles of American Diplomacy" (p. 208), Professor John Bassett Moore adopts this view. The intervention of the United States in Cuba, he declares, "...rested upon the ground that there existed in Cuba conditions so injurious to the United States, as a neighboring nation, that they could no longer be endured. Its action was analogous to what is known in private law as the abatement of a nuisance. On this ground the intervention was justified by the late Alphonse Rivier, one of the most eminent publicists in Europe, and on this ground its justification must continue to rest." (John Bassett Moore: *The Principles of American Diplomacy*, New York, 1918, p. 208.)



## § 8(a). PERSECUTION

Governmental persecution may be sufficiently gross to amount to inhumane conduct. Particularly frequent have been the instances of intolerance, that is, the denial to large numbers of persons of the liberty to profess their religion.

The French occupation of Syria from August, 1860, to June, 1861, was an incident typical of humanitarian intervention to prevent religious persecution. The Druses, in May, 1860, had massacred some six thousand Christian Maronites without any efforts on the part of the Porte to fulfil its obligations to protect the victims. Further massacres ensued shortly after, and stirred the sympathy of Europe. It was felt that the

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But the analysis of the principles governing this case and the study of precedents do not support this view. As far as the United States was concerned, there is no reason to believe that it would not have been possible to endure for several years more the distressing conditions in the neighboring isle, and the advantage of respecting the principle of non-interference in the affairs of a neighbor and the avoidance of a war would have been more than ample to outweigh the inconveniences of the Cuban situation. The diplomatic correspondence relative to Cuba (Foreign Relations, 1896, 1897, 1898) does not bear out the assertion that the intervention of the United States was principally actuated by the motive of self-interest. Had self-interest been really the basis of the action taken, intervention in Cuba would have been merely an instance of interposition in defense of American rights. "International nuisance" is not a happy designation for the reason that self-execution, which is characteristic of the abatement of a nuisance, is in international law the usual method for enforcing rights. We shall again have occasion to refer to this intervention.

Other authorities who recognize humanity as a just ground of intervention would prevent the abuses which in their opinion are likely to result therefrom by limiting it to the collective action of several states. Still others believe that the action of the intervening state can only be justified when it is disinterested. Desirable as it is that humanitarian intervention should be, whenever possible, both disinterested and collective, this cannot be made a condition for the justification

obligation of intervening could not be avoided, and on August 3, 1860, the ambassadors of the five great powers and Turkey signed at the Quai D'Orsay a protocol (agreement) for the dispatch of troops to Syria and the policing of the coast of Syria by the warships of the signatory powers. In its form the agreement provided for coöperation with Turkey because certain powers wished to sustain in every way the rights of Turkish sovereignty. For the same reason, care was taken in the agreement to preserve the collective character of the action, although in fact France supplied the 6000 troops necessary, and was the power most active in insisting that action be taken to succor the victims of Mohammedan fanaticism. The fear that France might take advantage of her intervention to secure special advantages was met by the adoption of a protocol of the same date (August 3) by which the representatives of the powers declared the disinterestedness of their governments and their intention not to seek "any territorial advantage, any exclusive in-

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of the action taken. In the first place, because the practice of states is not in accord with this theory. States are not generally willing to incur the burdens of intervention, even on the appealing ground of humanity, unless they are also actuated by other and more selfish considerations. In the second place, the adoption of this rule would lead to so many violations as to indicate and in time to establish a contrary rule in harmony with those precedents. Furthermore, collective intervention is often too unwieldy and too tardy to serve as a practical method of procedure. But these are, properly speaking, questions of international procedure which do not fall within our discussion of the grounds upon which intervention is justified. We shall, therefore, defer their consideration until, in another volume, we are able to consider the means by which interventions are carried out.

Certain authorities (Bernard: *Non-Intervention*, p. 7; Strauch: *Interventions—Lehre*, p. 14; Gareis: *Völkerrecht*, § 26, p. 85; F. de Martens: *Völkerrecht* [Bergbohm's Translation] vol. 1, § 76, p. 303; E. D. Dickinson: *Equality of*

fluence, or any commerical concession for their subjects which might not be granted to the subjects of all the other nations.''' Another safeguard was the limitation of the period of occupation to six months. At that time, the British Government was particularly suspicious of the designs of Napoleon III and very anxious to get the French out of Syria as soon as possible. To the objection that there was danger of further outrages, the British Ambassador replied that the presence of foreign vessels would exercise a sufficient moral influence to restrain the evil passions of the inhabitants of the Lebanon, and that in any event, nothing could be easier than to land a part of their crew, if necessary. (Cf. Protocol of February 19, 1861, LeClerq: *Traité de la France*, vol. 8, p. 172.) But the Russian Ambassador did not feel that this measure would suffice, and thought it necessary to prolong the occupation. At a later conference of the representatives of the five powers, held March 15, 1861, the Russian Ambassador supported the French proposal to prolong the occupa-

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States, p. 261-2) consider that humanitarian intervention is to be applied only in the case of semicivilized states that do not enjoy a full international status. It is true that these states are most frequently subjected to the corrective action of humanitarian intervention, but when by exception a civilized state transgresses the dictates of humanity, it also may be constrained to reform its conduct.

Professor Kebedgy remarks: "In addition to the great difficulty of tracing with any degree of accuracy the line of demarcation between civilized states and those which are not, this restriction would seem to be useless, for why should we tie our hands in advance, if perchance atrocities should come to be committed by the sovereign or the government of a state which would be called civilized? And beside might it not be said that by this fact alone the state in question approximated very closely the condition of barbarous states, and that it would consequently lose all title to respect for its independence?" (Translated from Kebedgy: *Intervention*, p. 84-5.)

tion for three months. "This, in his opinion, was a measure which would allow the great powers to respond to the urgent appeal made to them on the ground of humanity and at the same time to protect the general interests of Europe and of Turkey." The proposal was adopted and at the expiration of the period agreed upon the French withdrew, and on June 9, at Constantinople, the representatives of the powers agreed to the regulations for the administration of the Lebanon.<sup>15</sup>

Although the Sultan gave his official consent to this occupation, it was none the less a measure to which he only consented through constraint and a desire to avoid worse. It is therefore an instance of intervention, and one in which the states were actuated by motives of humanity to prevent religious persecutions which took the form of massacres of the Christian Maronites.

Moser (J. J. Moser: *Versucht der neuesten europäischen Völkerrechts*, 1778, part 6, chap. 6, p. 96-7) gives as an illustration of intercession an instance in which the representations addressed by the British and Netherlands Governments to Maria Theresa were so vigorous as to exceed mere intercession and to border on intervention in favor of the Jews of Prague. Moser reproduces Lord Harrington's instructions of March 5, 1745, to the British Minister at Vienna in which he directed him to continue to make the strongest efforts

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<sup>15</sup>This account is based on that given in Raymond Robin: *Des Occupations*, p. 281-5, and *The Life of the Marquis of Dufferin*, vol. I, p. 98-121. In the *American Historical Review* for January, 1921, p. 326, Dr. F. S. Bliss reviews Scheltema's *The Lebanon in Turmoil: Syria and the Powers in 1860*. Bliss refers to Shurchill's *The Druses and the Maronites*. The documents are given in *Le Clerq: Traités de la France*, vol. 8, pp. 79, 101, 170, 210, 273-8. Cf. also Ashley's *Life of Palmerston: Vol. II*, p. 212, showing the anxiety of the English to get the French out of Syria.

to prevail upon the Queen to revoke the decree expelling the Jews from Prague. The dispatch alludes to the representations made by the Dutch Government relative to the same matter. (Moser quotes from *Mercure*, 1747, vol. I, p. 363.)

In recent times, the oppression of the Jews and the many instances of outrage which they have been made to suffer afford the best example of intolerance. The persecution of the Roumanian Jews has elicited a series of remarkable interventions. In 1867, when certain Jews in Roumania were made the victims of outrages, Lord Stanley in his dispatch of June 14 to the British representative instructed him: "Her Majesty's Government trust that your expectations may be realized, but you will not relax your exertions to induce the Wallachina Government to protect the Jews from persecution, whatever shape it may assume, or whatever pretence may be alleged for it. You will call special attention to the observation of the Prefect of Jassy, that he must obey the orders of the Minister of the Interior, unless overridden by orders from Bucharest, and you will urge the issue of direct orders, such as will admit of no excuse if they are disregarded. You will press on the Prince that the attention of Europe is directed to the cruelties practised on the poorer Jews in Moldavia, and that the impression on foreign governments will be most unfavorable if effectual measures are not taken to put an end to them, whether they originate in arbitrary acts on the part of local authorities, or in the uncontrolled license of the Christian population of the province." (Parliamentary Papers, 1867, vol. 74 [3890].)

From Paris, the French Consulate at Jassy had received the following telegram of instructions: "The persecutions begun against the Jews at Jassy cause here a just and general indignation. Take prompt and

energetic steps to put a stop to an iniquity which is a dishonor to the Roumanian Government.” (Ibid.) The Israelite Community at Jassy, on June 16, made the following report of conditions: “The persecutions continue, though they make less noise. Commercial Jews traveling with passports not in order are thrown into chains. They seize upon individuals everywhere they find them, always under the excuse of their being vagrants.

“The people continue their hostile and menacing meetings; and if the process of the projected extirpation of the Jews is no longer done so openly, thanks to the intervention of the High Powers, it nevertheless is continued more quietly by the authorities, who deem the will of the Minister to be higher than the law.

“Bratiano has planned the destruction of our race in this country.” (Ibid.)

Under the date of April 10, 1872, Secretary of State Fish instructed Mr. Peixotto, the American Consul at Bucharest:

“This government heartily sympathizes with the popular instinct upon the subject, and while it has no disposition or intention to give offense by impertinently interfering in the internal affairs of Roumania, it is deemed to be due to humanity to remonstrate against any license or impunity which may have attended the outrages in that country. You are consequently authorized to address a note to the minister of foreign affairs of the Principalities, in which you will embody the views herein expressed, and you will also do anything which you discreetly can, with a reasonable prospect of success, toward preventing a recurrence or continuance of the persecution adverted to.” (Moore’s Digest, Vol. VI, p. 360; Foreign Relations, 1872, p. 688.)

A month later (May 13, 1872), Mr. Fish approved the action of Mr. Peixotto in joining in a remonstrance

addressed by the representatives of the foreign powers at Bucharest to the representative of the Principalities against the recent maltreatment of Israelites. The dispatch in part read:

“The Department approves your taking part in that remonstrance. Whatever caution and reserve may usually characterize the policy of this government in such matters may be regarded as inexpedient when every guarantee and consideration of justice appear to have been set at defiance in the course pursued with reference to the unfortunate people referred to. You will not be backward in joining any similar protest, or other measure which the foreign representatives there may deem advisable, with a view to avert or mitigate further harshness toward the Israelites residents in, or subjects of, the Principalities.” The remonstrance was signed by the representatives of Austria-Hungary, France, Germany, Great Britain, Greece, Italy, and the United States. (Moore’s Digest, vol. VI, p. 360; Foreign Relations, 1872, p. 691.)

In 1902, Secretary Hay called the attention of the powers to Roumania’s violation of the Treaty of Berlin and her unjustifiable oppression of the Jews. In this instance, the American Secretary of State alluded, it is true, to the interests of his government on the ground that Roumania’s action in driving to our shores a horde of miserably equipped immigrants placed a burden upon this country, but this alleged ground of action was somewhat far-fetched, since the United States could easily have overcome this inconvenience by passing legislation to exclude destitute immigrants. As the correspondence indicates, Secretary Hay’s intention was to demand justice for the oppressed Jews in conformity with the principles of international law and the dictates of humanity. This action was taken, as he said in his dispatch of August 11, 1902, to Mr. Mc-



Cormick, "not alone because it [the United States] has unimpeachable ground to remonstrate against the resulting injury to itself, but in the name of humanity" (Foreign Relations 1902, p. 45; cf. p. 42-5). The context shows that this latter was the real ground of the protest which the American representative was instructed to present to Roumania. A peculiar force was given to this action through its communication to the principal European powers. The answer from the British Government, dated September 2, 1902, contained the following promise of action: "His Majesty's Government will place themselves in communication with the other powers signatory of the treaty of Berlin, with a view to a joint representation to the Roumanian Government on the subject."<sup>16</sup> (Foreign Relations 1902, p. 550). But the other powers seem to have done no more than to acknowledge receipt of the communication and to give it, as the German Minister said, "such consideration as its importance deserves." (Foreign Relations, 1902, p. 442; cf. pp. 420, 684, 910-15, 936, 1048.)

In Russia also, the Jews have frequently been subjected to outrages from the populace. Horrible riots,

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<sup>16</sup>Sir William White's Life and Correspondence, edited by H. Sutherland Edwards, pp. 156-161, 168, indicates how vigorously Lord Salisbury championed the Jewish cause and how he would not let Sir William present his credentials, already prepared, as British Minister, until Roumania complied with the terms of Article 44 of the Treaty of Berlin relative to the treatment of the Jews. This account justifies the Roumanian Government and condemns the intervention of Great Britain, which it attributes, without supplying any documentary evidence, to a desire to support France (pp. 18-19, 86-90). From the same work, we quote the following account of the vigorous intervention of the British Government in favor of the Serbian Jews: "Not content with working through its own agents, the Foreign Office once went so far as to instruct Lord Augustus Loftus at Berlin to call the attention of Prince Bismarck to the disabilities weighing upon the Jews in Servia." (Ibid, p. 87.)



or pogroms, occurred after the assassination of Alexander II, due to the belief of the masses that the Jews were largely responsible for the crime. (See Foreign Relations, 1882, p. 446-452). By their government, too, these unfortunate people were also subjected to many vexatious and discriminatory regulations which interfered with their freedom of travel and with the choice of the occupations in which they might engage. (See Andrew D. White's report, Foreign Relations, 1894, p. 525-35.)

Deeply stirred by these barbarous and arbitrary acts, the United States intervened<sup>17</sup> diplomatically to the extent of making representations against the treatment of the Jews, and attempted to use its diplomatic influence in favor of toleration (Foreign Relations, 1880, p. 873; 1882, p. 451), but this action was at first carefully limited. When Secretary of State Evarts was requested by Hebrews in the United States "to make such representations to the Tsar's Government, in the interest of religious freedom and suffering humanity, as will best accord with the most emphasized liberal sentiments of the American people," he instructed Mr. Foster, the American Minister:

"You are sufficiently well informed of the liberal sentiments of this government to perceive that whenever any pertinent occasion may arise its attitude must always be in complete harmony with the principle of extending all the rights and privileges, without distinction on account of creed, and cannot fail, therefore, to conduct any affair of business or negotiation with the government to which you are accredited, which may involve any expression of the views of this govern-

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<sup>17</sup>Whether the action of the United States is to be considered an intervention or merely intercession will depend upon the definition given to these words. (See discussion under § 11.)

ment on the subject, in a manner which will subserve the interests of religious freedom. It would, of course, be inadmissible for the government of the United States to approach the Government of Russia in criticism of its laws and regulations, except so far as such laws and regulations may injuriously affect citizens of this country, in violation of natural rights, treaty obligations, or the provisions of international law, but it is desired that the attitude of the minister, as regards questions of diplomatic controversy, which involve an expression of view on this subject, may be wholly consistent with the theory on which this government was founded." (Foreign Relations, 1880, p. 873.)

But the United States approached the matter more vigorously from another direction, that is, through interposition to secure for American Jews established in Russia or Jews of Russian origin returning thither after naturalization the same treatment as other Americans would receive.<sup>18</sup> The result of acquiescence in this demand would have been to accord foreign Jews in Russia a treatment better than that received by Russian Jews, and would have made it very difficult to persist in the severe discriminations against the Jews. In the form of a reasonable request that all American citizens be treated with equal regard, it was really an

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<sup>18</sup>Another phase of this same question arose from the refusal of Russian consuls in the United States to visé the passports of Jews wishing to visit Russia. The Government of the United States took the ground that this refusal of a visé taking place upon American territory was a violation of the principle of equality which must prevail under American jurisdiction. (See Foreign Relations, 1893, p. 536, *passim*; *ibid*, 1895, Part II, p. 1065, *passim*; *ibid*, 1897, p. 442-3.) No doubt the United States was in a position to enforce compliance with this review, but the practical result could only have been to subject all Americans wishing to enter Russia to vexatious delays at the frontier. (See Foreign Relations, 1895, Part II, p. 1065.)

insistence upon a favored treatment for certain classes of Americans in Russia. The serious purpose of the American Government to force this issue was shown by a strong appeal in 1881 to the British Government for coöperative action upon the ground that aliens in Russia were "brought under the harsh yoke of bigotry or prejudice which bows the necks of the natives," and that "enlightened appeals were disregarded and were met with intimations of a purpose still further to burden the unhappy sufferers, and so to necessarily increase the disability of foreigners of like creed resorting to Russia." Secretary Blaine considered that it became "in a high sense a moral duty to our own citizens and to the doctrines of religious freedom we so strongly uphold to seek proper protection for those citizens and tolerance for their creed in foreign lands, even at the risk of criticism of the municipal laws of other states." Accordingly he instructed Mr. Lowell, our Minister at London, to "approach the British Government in the direction of urging similar or concerted representations with the United States in behalf of the amelioration of the condition of the Jews in Russia," and the American Chargé at St. Petersburg was similarly instructed freely to acquaint the British Ambassador with what was being done. (Secretary Blaine to Mr. Lowell, Nov. 22, 1881; to Chargé Hoffman, Nov. 23, 1881, manuscript instructions quoted in Moore's Digest, Vol. VI, p. 352-3.)

However great the sympathy of the British Government may have been with the purpose of the action, the delicacy of the relations of the European powers doubtless made such coöperation impossible, and the British Government declined to ask an equal treatment for all British subjects. The serious objection of Russia to any move in the nature of that suggested by the American Government was shown by a note published in the

*Agence Générale Russe*, objecting to collective action,

Basing its action on still another ground, the Government of the United States complained to the Russian Government of its harsh treatment of the Jews, which forced them to emigrate in large numbers to this country. In his instructions to the American Minister, February 18, 1891, Secretary of State James G. Blaine spoke of the action taken by the Russian Government as a step which "would not only wound the universal and innate sentiment of humanity, but would suggest the difficult problem of affording an immediate asylum to a million or more of exiles without seriously deranging the conditions of labor and of social organization in other communities." Mr. Blaine observes: "The Government of the United States does not assume to dictate the internal policy of other nations, or to make suggestions as to what their municipal laws should be or as to the manner in which they should be administered. Nevertheless, the mutual duties of nations require that each should use its power with a due regard for the results which its exercise produces on the rest of the world." (Foreign Relations, 1891, p. 737-9; cf. *Ibid*, 1894, p. 534.) The American representative was directed to read this instruction to the Russian Minister of Foreign Affairs. President Harrison, in his annual message, December 9, 1891, said: "This government has found occasion to express in a friendly spirit, but with much earnestness,<sup>19</sup> to the government of the Tsar, its serious concern because of the harsh measures now being enforced against the Hebrews in Russia." Referring to the effect of these measures to drive them to America, the President continued: "The banish-

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<sup>19</sup>The use of the word "earnest" has usually been regarded as conveying a warning of a very serious intention to follow up the representations in as far as the exigencies of the political situation should allow.

ment, whether by direct decree or by not less certain indirect methods, of so large a number of men and women is not a local question. A decree to leave one country is, in the nature of things, an order to enter another—some other. This consideration, as well as the suggestions of humanity, furnishes ample ground for the remonstrances which we have presented to Russia, while our historic friendship for that government cannot fail to give assurance that our representations are those of a sincere wellwisher.” (Foreign Relations, 1891, p. XIII.)

Notwithstanding the effort to make it appear that the United States was justified in protesting because of the injury which Russian persecutions caused this country, the humanitarian purpose shows through the disguise which was adopted, either for the purpose of sparing Russia’s feelings, or because of the prevailing prejudice against any intervention in the internal affairs of a neighboring state. In the very protest, it was stated that other countries have closed their doors to this Jewish immigration (President Harrison’s Message, Dec. 9, 1891, Foreign Relations, 1891, p. XII, cf. 745), and the United States could have adopted a similar policy had this apprehension really been the principal motive of the protests.

That the real motive was humanitarian intervention is indicated in Secretary of State Frelinghuysen’s instruction of April 15, 1882, to Mr. Hoffman:

“The prejudice of race and creed having in our day given way to the claims of our common humanity, the people of the United States have heard, with great regret, the stories of the sufferings of the Jews in Russia. It may be that the accounts in the newspapers are exaggerated, and the same may be true of some private reports. Making, however, due allowance for misrepresentations, it can scarcely be doubted that much has

been done which a humane and just person must condemn.

“The President, of course, feels that the government of the Emperor should not be held morally responsible for acts which it considers wrong, but which it may be powerless to prevent.

“If that be true of this case, it would be worse than useless for me to direct you, as the representative of the United States, to give official expression to the feeling which this treatment of the Jews calls forth in this country. Should, however, the attitude of the Russian Government be different, and should you be of the opinion that a more vigorous effort might be put forth for the prevention of this great wrong, you will, if a favorable opportunity offers, state, with all proper deference, that the feeling of friendship which the United States entertains for Russia prompts this government to express the hope that the Imperial Government will find means to cause the persecution of these unfortunate fellow-beings to cease.

“This instruction devolves a delicate duty upon you, and a wide discretion is given you in its execution. However much this Republic may disapprove of affairs in other nationalities, it does not conceive that it is its right or province officiously and offensively to intermeddle. If, however, it should come to your knowledge that any citizens of the United States are made victims of the persecution, you will feel it your duty to omit no effort to protect them and to report such cases to this Department.” (Foreign Relations, 1882, p. 451.)

After the great exodus of Jews from Russia to the United States, it was natural that the sympathy for the hard lot of the Russian Jews should have been deepened, and the urgent earnestness of the protests increased. The most notable instance was President Roosevelt's unofficial action relative to the Kishenev

Massacres (1903).<sup>20</sup> From Thayer's Life of Roosevelt, we take the following account: "Russian mobs ran amuck and massacred many Jews in the city of Kishenev. The news of this atrocity reached the outside world slowly: when it came, the Jews of Western Europe, and especially those of the United States, cried out in horror, held meetings, drew up protests, and framed petitions asking the Tsar to punish the criminals. Leading American Jews besought Roosevelt to plead their cause before the Tsar. As it was well known that the Tsar would refuse to receive such petitions, and would regard himself as insulted by whatever nation should lay them before him by official diplomatic means, the world wondered what Roosevelt would do. He took one of his short cuts, and chose a way which everybody saw was most obvious and most simple, as soon as he had chosen it. He sent the petitions to our Ambassador at Petrograd, accompanying them with a letter which recited the atrocities and grievances. In

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<sup>20</sup>Francis Rey gives an outline of the events, based upon French sources, and rather minimizing the seriousness of the action. See *Revue générale de droit international*, vol. XI, (1904), p. 88-94; cf. also Rougier, *ibid*, vol. 17, 1910, p. 476-7; also *Foreign Relations*, 1903, p. 712-715.

Hershey (*International Law*, p. 153, note 17) remarks: "The protests of Secretary Hay and President Roosevelt against the treatment of the Jews in Roumania and Russia in 1902 and 1903 were not interventions in the proper sense of this term. One is surprised to see Mérignhac (*Traité II*: p. 299 and n.) so characterize them." Roosevelt's action in 1903, it is true, was intercessory, but the intention was to influence Russia and Roumania by bringing to bear against them the public opinion of the world, and perhaps also, if the occasion should serve, the collective action of other powers. The danger which might result from the irritation which would be aroused was accepted by the United States, and in the case of Russia, stronger measures than words were eventually adopted, for the treaty of 1832 was later abrogated. Action such as this exceeds intercession, and is a diplomatic protest of a very pronounced character.



this letter, which was handed to the Russian Secretary of State, our government asked whether His Majesty the Tsar would condescend to receive the petitions. Of course, the reply was, no, but the letter was published in all countries, so that the Tsar also knew of the petitions, and of the horrors which called them out. In this fashion, the former ranchman and Rough Rider outwitted, by what I may call his straightforward guile, the crafty diplomats of the Romanoffs." (William Roscoe Thayer: Theodore Roosevelt, (1919), p. 229-230.)

Finally, public opinion in America became thoroughly aroused, and on December 17, 1911, the American Ambassador officially notified the Russian Government of the termination of the treaty of 1832. In a previous interview with Mr. Sazanoff, the American Ambassador explained the American viewpoint in regard to the contemplated abrogation of the treaty, and said that the action of the House of Representatives "was unquestionably influenced by a sincere conviction that such action might have far-reaching results in inducing Russia to abandon not only restriction of foreign Jews, but restriction of her own Jews, ..." (Foreign Relations, 1911, p. 695-9.)

When the Russian Minister received the notice of the termination of the treaty, he expressed "emphatically his surprise at the action of the Government of the United States, which he regarded as most unfriendly" (ibid, p. 698), and he refused to permit the Ambassador "even to explain in full" (ibid, p. 699) Secretary Knox's suggestion in regard to the public announcement to be made of the action taken; and thus did the Government of the United States, in the presence of



all the world, mark its disapproval of Russia's inhumane treatment of an unprotected people."<sup>21</sup>

An interesting case of humanitarian intervention to protect the Jews of Frankfort from the abusive exactions of the Prussians in 1866 is referred to in the Memoirs of Sir Robert Morier, from which we quote the following: "Morier took up his new post at Frankfort the day before the Diet left that Imperial City never to return. Though there for a short time only, it proved long enough for him to be able to join in taking steps to stop the Prussians levying blackmail on the Jews of that city, Frankfort having been treated with an untold degree of harshness, with a view of terrifying the other free cities of Germany into acquiescence in the conditions of the new [North German] Constitution. These measures were unimportant enough in

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<sup>21</sup>Mr. Arthur K. Kuhn, in a pamphlet entitled "International Law and the Discriminations Practiced by Russia under the Treaty of 1832," has pointed out that after Russia, in 1862, had adopted the practice of discrimination against subjects of the Jewish faith, Lord Granville first took a vigorous stand, declaring that: "The treaty between this country (Great Britain) and Russia of the 12th January, 1859, applies to all Her Majesty's subjects alike, without distinction of creed." (British State Papers, Vol. 73, p. 833.)

Mr. Kuhn remarks: "For some reason which does not clearly appear, Lord Granville afterwards surrendered his position in the matter and followed the precedent of 1862 and insisted only that British subjects should be placed on the same footing as Russian subjects of the same 'class.' He did not admit the correctness of the principle as a guide for the interpretation of the treaty; he simply did not desire to overrule his predecessor. Indeed, he clearly enunciated the choice of principle which was involved, for he says: 'The treaty is no doubt open to two possible constructions: the one, that it only assures to British subjects of any particular creed the same privileges as are enjoyed by Russian subjects of the same creed; the other, that the privileges are accorded to all alike without regard to the religious body to which they belong.' (British State Papers, Vol. 73, p. 845.) It has since become apparent that diplomatic considerations induced Great Britain to refrain

themselves, but sufficiently delicate to earn for him the public, as well as private approval of Lord Stanley, who had become Foreign Secretary on the fall of the Russell Cabinet in July." (Memoirs of Sir Robert Morier, Vol. II, p. 84.)

Turkey's persecutions of the Armenians have added another instance in which the United States has felt constrained by the obligations of a common humanity to intervene diplomatically. This action is of especial interest since it took place at a critical moment of the war, when American intervention might well have had

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from insisting on the construction of the treaty which she herself deemed correct.

"In striking contrast to the weak position finally taken by the British Government upon this question, prompted probably by considerations of policy and expediency, rather than of international legal justice, was the attitude taken at the same time by the United States with reference to the same contention."

The Department of State took a similar stand in regard to the protection of Jews in Switzerland. To quote from the same source: "Prior to the Constitution of Switzerland of 1874, under which religious equality is now guaranteed as effectually as in the United States, subjects of Jewish faith were prohibited from establishing themselves in certain Cantons and were under heavy disabilities in others. Representations were made to Switzerland by several European countries, as well as by the United States, in reply to which these Cantons maintained the right to impose the same disabilities on subjects of foreign nations with which Switzerland had concluded treaties of friendship, commerce and intercourse, as were imposed on natives of the same class in Switzerland. In opposition to this contention, Mr. Seward, our Secretary of State, entered into voluminous correspondence with Mr. Fay, the American representative in Switzerland, instructing him to insist upon the rights of American Jews, notwithstanding the disabilities under which the particular Cantons had placed Jews of Swiss origin."

Further along, Mr. Kuhn remarks: "France, at that time, was particularly energetic in demanding full treaty rights to its citizens of Jewish faith. In 1851, Louis Napoleon, through the French Minister at Berne, sent a note in which he stated

the most serious consequences for the Turkish Government and those responsible for the frightful horrors perpetrated upon the defenseless Armenians. The New York *Evening Post*, October 5, 1915, prints the following report from Washington: "The Turkish Government will be formally notified that unless the massacre of Armenians ceases, friendly relations between the American people and the people of Turkey will be threatened. Instructions to that effect had gone today to Ambassador Morgenthau at Constantinople for presentation to the Foreign Office. Officials here made

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that France would expel all Swiss citizens established in France in case the two Cantons (Basle City and County) would insist on carrying out their law prohibiting the establishment of French citizens of the Jewish faith on their territory. (*Allgemeine Zeitung des Judenthums*, December 15, 1851; January 1, 1852; S. M. Strook, op. cit., pp. 12-13.) The matter was finally referred to a commission of the Senate of the Second Empire and in 1864 a report was made through the chairman of the commission, Ferdinand de Lesseps, in the following terms:

'No distinction may be recognized in the enjoyment of civil and political rights between a French Jew and a French Catholic or Protestant. This equality of rights must also follow a citizen beyond the frontier; and the principles of our Constitution do not authorize the Government to protect its subjects in a different manner according to which faith he professes.' (See *Débats Parlementaires*, 1909, p. 3779.)

"As a result of this movement, the French Government finally repudiated the prior treaties which were unsatisfactory in failing to guarantee equal treatment to all French citizens, and a new treaty was obtained from Switzerland in which such a guarantee was expressly made by recognizing 'the right of French subjects, without distinction of faith or worship, to travel, sojourn, and transact all lawful business, as freely as Swiss Christian residents of other Cantons may do.' (*Foreign Relations*, 1864, p. 401.)

"The victory which French diplomacy had won over the illiberalism of the Swiss Cantons solved the problem of the United States Government as well."

it plain, however, that the message did not threaten a rupture in the diplomatic relations between the two countries.

“The Ambassador’s instructions are merely to inform Turkey that the American people already are so stirred by the reported massacres that a continuance of the atrocities might result in a break in the friendly relations between the two peoples.

“It was explained at the State Department that the instructions to Ambassador Morgenthau direct him to offer his good offices in behalf of the Armenians, and to state to the Turkish Government that reports of atrocities upon Armenians are causing unfriendly criticism among the people of the United States.”

The Council of the League of Nations has recently invited the United States to accept a mandate for the supervision of Armenia.<sup>22</sup>

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<sup>22</sup>The report of the American Military Mission to Armenia, dated October 16, 1919 (printed in International Conciliation Pamphlet No. 151), gives an account of the treatment of the Armenians, from which the following extracts are taken:

“The Russo-Turkish War ended in 1877 by the treaty of San Stefano, under which Russia was to occupy certain regions until actual reforms had taken place in Turkey. This treaty, through British jealousy of Russia, was torn up the following year and the futile treaty of Berlin substituted, asking protection but without guaranties. Meantime there had been the convention of Cyprus, by which that island passed to Great Britain, and the protection of Turkey was promised for the Armenians in return for Great Britain’s agreement to come to the aid of Turkey against Russia. A collective note of the powers in 1880 was ignored by Turkey. Then followed the agreement of 1895, which was never carried out, and the restoration of the constitution of 1876 in 1908. A further agreement in 1914 was abrogated at the entrance of Turkey in the war—and the last of the series is a secret treaty of 1916 between Great Britain, France, and Russia, the existence and publication of which rest on Bolshevik authority, by which Armenia was to be divided between Russia and France. Meanwhile there have been organized official massacres of the Ar-

We might also class as instances of religious persecution the severities to which the Greeks were subjected before the intervention of the powers brought them freedom (1827), and the Bulgarian atrocities (1876), which were the immediate cause and a sufficient justification of Russia's intervention. But other motives than religious persecution seem more justly entitled to claim the honor of having actuated these interventions.

We cannot pass over without remark the religious persecutions of the Reformation, and the many interventions to which religious sympathies gave rise, but it is difficult to consider them as true instances of humanitarian intervention to prevent unusual persecution, for such persecutions seem at that period to have been the rule rather than the exception. We ought therefore to compare them with those modern interventions of the Holy Alliance to support Legitimacy, and the interven-

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menians ordered every few years since Abdul Hamid ascended the throne. In 1895, 100,000 perished. At Van in 1908, and at Adana and elsewhere in Cilicia in 1909, over 30,000 were murdered. The last and greatest of these tragedies was in 1915. Conservative estimates place the number of Armenians in Asiatic Turkey in 1914 over 1,500,000, though some make it higher. Massacres and deportations were organized in the spring of 1915 under definite system, the soldiers going from town to town. The official reports of the Turkish Government show 1,100,000 as having been deported. Young men were first summoned to the government building in each village and then marched out and killed. The women, the old men and children were, after a few days, deported to what Talaat Pasha called "agricultural colonies," from the high, cool, breeze-swept plateau of Armenia to the malarial flats of the Euphrates and the burning sands of Syria and Arabia. The dead from this wholesale attempt on the race are variously estimated from 500,000 to more than a million, the usual figure being about 800,000.

"Driven on foot under a fierce summer sun, robbed of their clothing and such petty articles as they carried, prodded by bayonet if they lagged, starvation, typhus and dysentery left thousands dead by the trail side. The ration was a pound of bread every alternate day, which many did not receive, and

tions of the Wilson administration to support constitutional Government, which is equivalent to saying that they are not interventions at all, but interferences of a political complexion for the extension of certain opinions, to be justified, if at all, by the circumstances in each case and the results achieved.

Sir Frederick St. John, in his *Reminiscences of a Retired Diplomat* (p. 16-17), gives the following account of the action which the British Mission in Tuscany about 1855 took to prevent the religious persecution of the Protestants. It serves also to illustrate the care that was taken to give an aspect of friendly intercession to what was substantially intervention:

“My office of private secretary relieved me from the routine duties in the chancery, and my occupations were chiefly of a social character, such as those above described; but I was occasionally employed in more serious matters, such as contributing to the relief of victims of the religious persecution which was then [about 1855] so rampant in Tuscany. The method employed was the following: Instances of imprisonment of persons discovered to have attended Bible meetings, at that time held in all parts of the grand duchy, were ver-

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later a small daily sprinkling of meal on the palm of the outstretched hand was the only food. Many perished from thirst or were killed as they attempted to slake thirst at the crossing of running streams. Numbers were murdered by savage Kurds, against whom the Turkish soldiery afforded no protection. Little girls of nine or ten were sold to Kurdish brigands for a few piasters, and women were promiscuously violated. At Sivas an instance was related of a teacher at the Sivas Teachers' College, a gentle, refined Armenian girl, speaking English, knowing music, attractive by the standards of any land, who was given in enforced marriage to the beg of a neighboring Kurdish village, a filthy ragged ruffian three times her age, with whom she still has to live, and by whom she has borne a child. In the orphanage there maintained under American relief auspices there were 150 “brides,” being girls, many of them of tender age, who had been living as wives in

bally reported to me by the members of the central committee of proselytes, with every detail as to name, date and locality; this was for the information of my chief, who thereupon would call on the Tuscan minister whom it concerned, and adjure him for the sake of Tuscany's good name to order the liberation of the prisoners, before the foreign press could get wind of the occurrence and publish it to the world. I cannot now recall a single case of failure; and I attribute the great success of Lord Normanby in this matter to his unequalled prestige in the country of his adoption as a residence, as well as to his great intimacy with the Grand Duke—who, with all his bigotry, was known for his kind heart and dread of giving any cause for scandal. I must mention that such was the fear of detection, that, although I received weekly visits from members of the proselyte and proselytising brotherhood during my three years of service as a medium of communication, I was never visited twice by the same individual; while several times I was approached by persons whom I had known by sight, but had never suspected of Protestant proclivities.” (Sir Frederick St. John: *Reminiscences of a Retired Diplomat*, London, 1905, p. 16-17.)

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Moslem homes and had been rescued. Of the female refugees among some 75,000 repatriated from Syria and Mesopotamia we were informed at Aleppo that forty per cent. are infected with venereal disease from the lives to which they have been forced. The women of this race were free from such diseases before the deportation. Mutilation, violation, torture and death have left their haunting memories in a hundred beautiful Armenian valleys, and the traveler in that region is seldom free from the evidence of this most colossal crime of all the ages. Yet immunity from it all might have been purchased for any Armenian girl or comely woman by abjuring her religion and turning Moslem. Surely no faith has ever been put to harder test or has been cherished at greater cost.” (International Conciliation Pamphlets, No. 151, p. 280-1.)

“Testimony is universal that the massacres have always been ordered from Constantinople.” (Ibid, p. 285.)



## § 8(b). OPPRESSION

The cruel and unnecessary suppression of the national institutions and aspirations of a subject people is an abuse of power which shocks the civilized world in every fibre. The indignation of public opinion spurs on to action governments even which are sluggish and without ambitions. This reluctance is sometimes due to the fear that intervention in defense of the rights of nationality or self-determination may be turned against them to encourage portions of their own empires to seek an inconveniently great degree of independence of status. It is natural, therefore, that governments should prefer to urge other grounds to justify the humanitarian intervention which they have undertaken.<sup>23</sup>

Formerly, religious sentiment was closely connected with the racial characteristics and the nationalistic aspirations of a people. In consequence, political oppression and attempts to assimilate or suppress alien races generally took the form of religious persecution.<sup>24</sup>

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<sup>23</sup>Napoleon III made intervention in favor of nationality, that is for self-determination, a guiding principle of his foreign policy, and to it he owed much of the success of his earlier years. His most serious errors were his departures from this policy, as his interference in Mexico and his attempt to prevent German unity. The Italians have pushed this theory to the utmost extreme.

<sup>24</sup>During the French wars of religion, the Catholic publicists argued that the Protestants were not really French (Esmein, *La théorie de l'intervention internationale chez quelques publicistes français du XVI<sup>e</sup> siècle*, in *Nouvelle revue historique de droit français et étranger*, 1900, vol. 24: 549-574.) Even today nationality in countries under Turkish rule is confounded in the popular mind with acceptance of Mohammed. Before the war, the Russian peasant had something of this attitude towards all who were not of the orthodox religion, and we often find a survival of this prejudice in certain persons who consider the racial origin or religion of a Jew as determining his status, rather than the nationality to which he belongs.



In truth, persistent religious persecution has survived only in those countries like Turkey or Russia that regard those who profess another faith in the light of aliens. In the nineteenth century, the great growth of national states and the keen rivalries of great powers led certain of the less developed and more reactionary powers like Russia and Prussia to attempt the complete absorption of the peoples or nations under their jurisdiction. A similar desire to preserve her influence led Austria to block the efforts of the people of the small Italian states to achieve their national unity. These various attempts at the suppression of the nationalistic aspirations of a subject people have shocked the moral sense of Europe. If on the one hand international law cannot be said to have recognized the right of a people who possess distinct national characteristics to be independent, or even to be granted an autonomous regime, on the other hand it may be said that international law does not allow these aspirations to be suppressed with unrestricted severity.

Whatever justification can be found for the interference of the American Government in the Irish troubles of 1848 must rest upon the right of self-determination. Under date of September 4, 1848, Mr. Isaac Toucey, Secretary of State ad interim, sent Minister Bancroft the following instructions: "It is the wish of the President and, he instructs you to urge upon the British Government the adoption of a magnanimous and merciful course towards those men who have been implicated in the late disturbances in Ireland." (Executive Document No. 19, 30 Congress, Bancroft Collection, New York Public Library, Vol. 33, p. 242.)

In America also an active propaganda—meetings, collection of funds, and fitting out of the agitators—was carried on without any repression from the governmental authorities, to the great irritation of the

British Government, which proceeded to employ measures of reprisal against Americans traveling in Ireland. Several Americans were imprisoned and searched under secret orders which were not disclosed. This action was taken apparently by way of retaliation against Americans. (Cf. Bancroft Collection of Documents on Foreign Relations, New York Public Library, vol. 33; cf. also Parliamentary Papers, 1852, vol. 54, Buol to Palmerston,—refers to this discrimination against the United States.)

The motive of the interference of France and Great Britain in the affairs of Naples, 1857, was the protection of the political agitators who were striving for Italian national unity and freedom from Austrian tutelage.<sup>244</sup>

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<sup>244</sup> But since it was the agitators who were trying to effect a revolution, and since the Neapolitan Government was merely attempting to hold its own, there was no active suppression of national institutions. Cruel treatment, when confined to political prisoners, may possibly be considered some day as a ground for humanitarian intervention, but as yet it has not been so recognized.

In this connection it is interesting to note what Lord Palmerston had written his brother a few months previously: "You may assure the King of Naples, if you see him, that I am anxious to renew with Naples that friendly footing of mutual relations which existed in the time of some of his ancestors, but that such a state of things is impossible unless he changes his system of policy, foreign and domestic.

"We do not presume to dictate to him on either of these branches, but we are entitled to say on what conditions our good-will is to be obtained, and the course of events seems to show that the good-will of England is a matter of some importance even to states as far removed from our shores as Naples is." (Ashley: Palmerston, II, p. 78; cf. the remarks of Count Walewski, Congress of Paris, Protocol of April 8, 1856.

John Stuart Mill was evidently justified in his belief "that Palmerston really hoped by holding the King of Naples up to shame before all Europe to force him to change his conduct somewhat. But he didn't know his man"; comments the philosopher. (Free translation from Mill's Letters, Vol. I, p. 195.)

In 1863, Great Britain, France, and Austria made concurrent representations or protests to Russia in regard to her oppressive treatment of her Polish subjects.

The intricate nature of the prolonged negotiations complicated by the divergencies of view between the separate powers cannot unfortunately be fully considered within the limits of the space at our disposal and we must refer the reader to the sources we have examined for the verification and amplification of our statements.<sup>25</sup>

Alexander I of Russia at the Congress of Vienna planned to reconstitute the Kingdom of Poland under his own suzerainty, but England objected because she feared the preponderance of Russia on the Continent.<sup>26</sup>

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<sup>25</sup>This brief account of the deplorable events of the humanitarian intervention of the powers in favor of the Poles was prepared from the following works and documents: French Yellow Book, 1863, *Affaires de Pologne*; Parliamentary Papers, 1863, Vol. 75, Poland [3150]; British State Papers, Vol. 37, p. 1416-44; Ibid, Vol. 53, p. 766-918; Spencer Walpole's *Life of Lord John Russell* Vol. II, p. 380-384, Ashley's *Life of Lord Palmerston* Vol. II, p. 230-33, Annual Summaries reprinted from *The Times* [London] Vol. I (1893) p. 161-5; *Europäischer Geschichtskalender* by H. Schulthess 1863, p. 245-71.

<sup>26</sup>In the reports which Viscount Castlereagh sent to Lord Liverpool from Vienna, 1814-1815, he indicates very clearly that his opposition to the Russian design of incorporating the occupied Polish territory into a separate monarchy under the sovereignty of Russia was due to the interest of his country in maintaining the balance of power and in preventing Russia from acquiring a predominance upon the Continent. Viscount Castlereagh evidently found Austria and Prussia little desirous of resisting the Russian designs. In his dispatch of January 11, 1815, to the Earl of Liverpool, Viscount Castlereagh remarks: "I am convinced that the only hope of tranquility now in Poland and especially of preserving to Austria and Prussia their portions of that kingdom, is for the two latter to adopt a Polish system of administration as a

At the same time English public opinion wished to secure for the Poles some adequate guarantee for the preservation of their national institutions. It was eventually agreed to include in the Final Act articles in which Russia, Prussia, and Austria made certain

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defense against the inroads of the Russian policy." (Parliamentary Papers, 1863, vol. 75, [3188], No. 14.)

In the same dispatch Viscount Castlereagh encloses a memorandum which he placed officially on record to give the views of the British Minister on the matter. With slight amendments, Lord Castlereagh addressed this in the form of a circular note to the plenipotentiaries of the Conference. He refers to the desire of his court to see a free and independent state under a distinct dynasty established in Poland. The unwillingness of Austria and Prussia to oppose the Russian plan is alluded to, and the sincere hope expressed that none of the evils which he has feared "...may result from this measure to the tranquility of the North, and to the general equilibrium of Europe, which it has been his painful duty to anticipate."

The memorandum further expresses the hope that "...the illustrious Monarchs to whom the destinies of the Polish nation are confided, may be induced, before they depart from Vienna, to take an engagement with each other to treat as Poles, under whatever form of political institution they may think fit to govern them, the portions of that nation that may be placed under their respective sovereignties. The knowledge of such a determination will best tend to conciliate the general sentiment to their rule, and to do honor to the several Sovereigns in the eyes of their Polish subjects. This course will consequently afford the surest prospect of their living peaceably and contentedly under their respective Governments.

"If such should happily be the result, the object which His Royal Highness the Prince Regent has most at heart, namely, the happiness of that people, will have been secured; and it will only remain for His Royal Highness most anxiously to hope that none of those dangers to the liberties of Europe may ever be realized which might justly be apprehended from the reunion of a powerful Polish Monarchy with the still more powerful Empire of Russia, if at any time hereafter the military force of both should be directed by an ambitious and warlike Prince." (Parliamentary Papers, 1863, vol. 75, [3188] No. 14.)

promises in regard to the treatment of their annexed Polish possessions.<sup>27</sup>

The Russian Tsar in fulfilment of his promise granted the Poles a constitution, but in 1830 when the French Revolution shook Europe, the Poles rose in insurrection and demanded their independence. The uprising was suppressed and the constitution abolished. Lord Palmerston, then Secretary for Foreign Affairs, was supported by the Government of Louis Philippe in interceding for the Poles and in registering a mild protest.<sup>28</sup>

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<sup>27</sup>Article 1. The Duchy of Warsaw, with the exception of the provinces and districts which are otherwise disposed of by the following Articles, is united to the Russian Empire. It shall be irrevocably attached to it by its Constitution, and be possessed by His Majesty the Emperor of all the Russias, his heirs and successors in perpetuity. His Imperial Majesty reserves to himself to give to this State, enjoying a distinct administration, the interior improvement which he shall judge proper. He shall assume with his other titles that of Tsar, King of Poland, agreeably to the form established for the titles attached to his other possessions.

The Poles, who are respective subjects of Russia, Austria, and Prussia, shall obtain a Representation and National Institutions, regulated according to the degree of political consideration, that each of the Governments of which they belong shall judge expedient and proper to grant them. (Article I, of the Final Act of the Treaty of Vienna, Herstlet: Map of Europe by Treaty, Vol. I, p. 216.)

<sup>28</sup>In the diplomatic correspondence (see British State Papers, vol. 37, under Russia), Lord Palmerston admitted that because of the delicacy of the internal situation, the British Government wished to avoid giving any offense to Russia. Under these circumstances the lion roared as gently as a sucking dove.

In his instructions of March 22, 1831, Lord Palmerston wrote:

“Your Lordship will, of course, be careful not to take any step on this business which could lead to any unfriendly discussions with the Russian Government, with whom His Majesty’s Government are, under present circumstances, more than ever desirous of keeping up the closest relations of friendship.” (British State Papers, Vol. 37, p. 1418.)

In the early sixties the Polish question again became acute, and the Russian Government attempted to anticipate the coming revolt by drafting the Polish leaders into the army in violation of the constitution of 1861 which the Russian Government had granted the Poles.<sup>29</sup> This arbitrary act infuriated the Poles and incited all who were able to escape to engage in an internecine war for Polish independence.

Liberal Europe was aroused and the pressure of public opinion as well as other political considerations induced the Liberal Powers to enter a vigorous protest against the Russian measures of repression. France and Great Britain were later joined by Austria. The latter had little sympathy for the grounds upon which the western powers based their intervention but she feared the growing intimacy of Russia and Prussia and wished to avoid a dangerous isolation in which she would find no counterbalancing support. Austria had another motive. She was also glad to purchase immunity from agitating her own Poles by the more liberal policy which she adopted in her treatment of them.<sup>30</sup>

Without entering any further into the interesting details of this important instance of humanitarian intervention, undertaken for the purpose of preventing the oppression of the Poles, we may now consider what the evidence is to show that this was a veritable instance of intervention, in which the protesting powers

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<sup>29</sup>Lord John Russell referring to Russia's justification for this act appropriately remarked: "No argument can make it right to turn conscription into proscription." (British State Papers, Vol. 53, p. 780.)

<sup>30</sup>The main lines of the Austrian policy are disclosed in the diplomatic correspondence. (See British State Papers, Vol. 53, p. 797, 813, 829-831, 834-841, 859-862, 910-911.)

indicated by their acts their evident expectation of constraining Russia to modify her treatment of the Poles.

That the action of France, England, and Austria was an instance of intervention relying upon the armed force of the coöperating states and not a mere intercession such as occurred in 1832 is shown by the following circumstances:

In the first place the language employed in the notes,—especially the official statements of the British Secretary for Foreign Affairs,—was so minatory as to seem a presage of war in the event the Russian government should not yield.<sup>31</sup>

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<sup>31</sup>In the diplomatic intercourse of great states language such as that employed by Earl Russell the British Secretary of State for Foreign Affairs can have but one meaning: It requires that the power to whom it is addressed yield to the menace politely conveyed but hardly veiled. Otherwise war must result unless the protesting or threatening power prefers an ignominious retreat. Since the traditions of Great Britain gave no indication that she would choose the path of humiliation, the real significance of Earl Russell's words was clear to all. (See notes of March 2, April 10, and June 17 in the British State Papers, Vol. 53, p. 805-7, 863-6, 897-901.)

Amplly sufficient as was the menacing language of the British notes to indicate presumably the intention of that government to employ force if necessary, this impression was greatly strengthened by what Earl Russell said to the Baron Brunnow, the Russian Ambassador, in the course of an informal conversation relative to the note of April 10th about to be dispatched. "Her Majesty's government," declared Earl Russell, "had no intentions that were otherwise than pacific. Still less any concert with other powers for any but pacific purposes.

"But the state of things might change. The present overture of Her Majesty's government might be rejected, as the representation of the 2nd March had been rejected by the Imperial Government. The insurrections in Poland might continue and might assume larger proportions; the atrocities on both sides might be aggravated and extended to a wider range of country. If, in such a state of affairs, the Emperor of Russia were to take no steps of a conciliatory nature, dangers and complications might arise not at present in contemplation." (British State Papers, Vol. 53, p. 866-7.)



In the second place the efforts made to organize a collective action on the part of the coöperating powers when Russia had disregarded the first separate representations of France and Great Britain affords still stronger evidence that there was a serious intention to constrain Russia to heed the representations addressed to her.

Any implication of menace, which the statements relative to Poland might contain, would naturally be greatly increased by giving them the collective support of several powers. England, France and Austria reached an agreement to present their respective notes of protest to the Russian Government upon the same date.<sup>32</sup>

This concurrent action lacked, it is true, some of the force which it would have possessed if the powers had shown their unity of council and purpose by presenting identic notes.<sup>33</sup> But in this instance the effect of

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<sup>32</sup>The British Government wished to organize a collective action which should exercise the desired constraint upon Russia, but apparently did not wish to be committed to a joint intervention with France alone. Austria would not consent to joint action, but did agree to a concurrent and simultaneous presentation of notes which each of the three powers had previously communicated to the others. (For the diplomatic history of this interesting procedure, see British State Papers, Vol. 53, p. 809, 811, 812-13, 813-14, 815, 830, 837, 840, 844, 849, 850, 859, 861-2, 881-2, 890, especially 861-2.)

<sup>33</sup>Rarely in the annals of diplomacy has a more incongruous crew united for a common undertaking. France had just been trying to build up a political understanding with Russia and wished in consequence to deflect her intervention toward Prussia on the ground of the latter's interference in the matter. (See British State Papers, Vol. 53, p. 809, 812, 826.) Great Britain was desirous of preventing the Russification of the Polish provinces, because she was apprehensive of an increase of Russian power and because she sympathized with the Poles. But the British Government distrusted the French designs on the Rhine and were unwilling to engage with France alone in any joint action against either Prussia or



their concurrent action was somewhat increased by the supporting representations which certain of the smaller states, Italy, Spain, Portugal, and Sweden, made in response to the invitations of the intervening powers.<sup>84</sup>

It is not possible to consider the action of these smaller states as intervention, since they were unwilling to appear to go beyond the ordinary friendly rep-

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Russia. (British State Papers, vol. 53, p. 837, 867; cf. *Memoirs of Ernest, Duke of Saxe-Coburg-Gotha*, Vol. IV, p. 116, *ibid*, p. 127; *Count Vitzthum's Reminiscences*, Vol. II, p. 234, 240, 260.)

Another cause of dissension was that Great Britain wished the concurrent action of the powers to be based upon Russia's violation of Article I of the Final Act of Vienna (British State Papers, Vol. 53, p. 863-4, cf. 806, 834, 836, 866). The French Emperor whose very accession to the throne might be considered a violation of the Treaty of Vienna, even although he yielded somewhat to British insistence and referred to the action taken at Vienna (British State Papers, Vol. 53, p. 827-8), could hardly be desirous of defending treaties which had been dictated to France (British State Papers, Vol. 53, p. 875).

Strangest of all was Austria's concurrence in view of her recent (1846) annexation of Cracow in violation of Articles VI and IX of the Final Act (see R. Robin; *Occupations*, p. 238-242), and in view of Russia's interference in 1849 to assist her in suppressing the Hungarian revolution. Could Austria, one of the original partitioning powers of Poland, give much support to an action in favor of the Poles?

These various causes of dissension between the three intervening powers deprived their concurrent representations of some of the force which they would otherwise have had.

<sup>84</sup>Italy, Spain, Portugal, and Sweden responded to the invitation of France and Great Britain (British State Papers, Vol. 53, p. 812, 862, 890) to join in making representations in behalf of the oppressed Poles and these states coöperated to the extent that they believed expedient. (British State Papers, vol. 53, p. 844-5, 850, 851, 874-5, 880, 886.)

The United States had declined to intervene on the ground of its policy of "non-intervention in European affairs" (*Diplomatic Correspondence*, 1863, Part I, p. 667).

representations which are then sent out through the diplomatic channels in return."

We have said enough to show that the directness of representation of the intervening powers might be primary, not secondary, in character as an intervention by the Russian Government itself and by public opinion in all other states including the intervening states.

Prince Adam, then in London with his father, the Russian Emperor, wrote May 2, 1862, "...and the Polish question is becoming so grave that we are led to a little" *Letters of Adam Letters 1861-2*, Vol. I, p. 204.

"The Russian Government in reply to the invitation or joint suggestion made in regard to Poland of the Poles, but as their Ambassador explained to the British representative at St. Petersburg, he was thought it better to abstain from entering into any particulars regarding Polish reform. Since what might be advanced coming from England might be the cause of coming from Russia. Count Manderstam further said that a few things in this way think Her Majesty's Government would be better upon such details, he thought the Russian Government ought to abstain from them." *British State Papers*, Vol. 52, p. 564.

The representations of the Russian Government were still more general. As we may say upon Prince Gortchakoff's Statement. *Russian State Papers*, Vol. 52, 560; but cf. *ibid.* p. 575.

The first representations which the French Government made to the Emperor, through de Lhuys to the Duc de Mouches, Feb. 12, 1862. *British State Papers*, Vol. 52, p. 571-2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

Similarly in 1861-2, the British Government did no more than intercede for the Poles and closed the correspondence with a mild protest couched in the most friendly language. (*See British State Papers*, Vol. 37, p. 1418, 1428-9, 1436, 1439-1444.)

For a moment Russia felt really apprehensive,<sup>36</sup> and Prince Gortchakoff expressed a willingness to consider the representations of the intervening powers, and by his language seemed expressly to invite suggestions as to the best solution of the difficulty upon the basis of and in conformity with the provisions of the Treaties of Vienna (British State Papers, Vol. 53, p. 892, 896-7, cf. 898). It was not long, however, before Prince Gortchakoff became convinced that Great Britain would not fight for Poland and that Earl Russell's peremptory words would not be sustained by the ministry or the British public.<sup>37</sup> He must also have calculated upon the

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<sup>36</sup>Lord Napier reporting to Lord Russell the promulgation of an Imperial manifesto promising reforms and pardons to certain of the insurrectionists concluded: "How far it has been prompted by the expectation of foreign intervention I am not able to affirm with confidence; I am inclined to think it may have been accelerated by such apprehensions, but it is also plainly consistent with policy, as well as with the benevolent disposition of the sovereign." (British State Papers, Vol. 53, p. 883.)

<sup>37</sup>Earl Russell might perhaps have achieved a diplomatic success through the mere presentation of emphatic notes if he had had the loyal support of his subordinate, Lord Napier, then British Ambassador at St. Petersburg. Lord Napier seems to have been more eager to preserve peace with Russia than he was to cherish his country's honor. At the moment when Russia was most apprehensive he assured his Russian friends that Great Britain would not make war for the Polish cause. (See *The M. P. for Russia, Reminiscences and Correspondence of Madame Olga Novikoff*, edited by W. T. Stead, 1909, p. 64 *passim*.) If he acted upon his own responsibility in showing Prince Gortchakoff Earl Russell's note before he presented it officially he helped the Russian Vice-Chancellor to humiliate his chief (see *Lord Redesdale: Memories*, Vol. I, p. 224-5, quoted below). One authority states that Napier explained to Gortchakoff that the note was merely a humane expression and that it would entail no further consequences. (St. von Kozmian, *Das Jahr 1863*, Authorized German Edition by S. R. Landau, p. 297.)

In his eagerness to assure Russia that his government did not mean what Earl Russell's language fairly implied Lord

estrangement between the Western Powers and the advantage Russia derived from Prussia's assistance. It was likewise apparent that Austria did not want war if she could avoid it.

This was Gortchakoff's opportunity to pay back Earl Russell in his own coin. He left the British note unanswered for some time and then declined to accede to the suggestion which the intervening powers had made. The note which Baron Brunnow was instructed to deliver to Earl Russell left only the choice of an humiliating acquiescence or recourse to arms. (See British State Papers, Vol. 53, p. 901-907, cf. 907-910, 917). As Lord Russell himself recognized "...the question came to be whether the three powers should together urge their demands by force or relinquish the attempt." (Spencer Walpole's Lord Russell, Vol. I, p. 383). But the recollections of the Crimean war were still too vivid and the distrust of France too deep for the British ministry to pick up the gauntlet.<sup>38</sup>

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Napier may have encouraged Prince Gortchakoff to play at the same game of bluster as the British Secretary. In any event he was fittingly alarmed at the possible consequences of the Russian reply and begged from Prince Gortchakoff some conciliatory assurances which should make it possible for his government to swallow the affront. (British State Papers, Vol. 53, p. 910.)

<sup>38</sup>Lord Redesdale has left us an interesting account of the melancholy, though ludicrous, end of this fiasco:

"Lord Russell climbed down not handsomely. In a dispatch to Lord Napier of the 11th of August he said: 'If Russia does not perform all that depends upon her to further the moderate and conciliatory views of the three Powers,' Great Britain, Austria and France, 'if she does not enter upon the path which is opened to her by friendly counsels, she makes herself responsible for the serious consequences which the prolongation of the troubles of Poland may produce.'

"And that was the lame and impotent conclusion of a game of brag and insolent bluster which had been carried on for many months. The fizzling out of a damp squib!

"But there is one story which Mr. Hennessy, Conservative member for King's County, told in the House of Commons,

And thus disappeared all hope of effective action to prevent the Russian Government from oppressing the

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*and was never contradicted*, which is too good and too characteristic to be omitted—I take it verbatim from Lord Salisbury's essay on Foreign Politics, p. 202.

“ ‘When Prince Gortchakoff's last defiance had arrived, and the Government had made up their minds to practise the better part of valor, Lord Russell made a speech of Blairgowrie, and being somewhat encouraged and cheered by the various circumstances of consolation which are administered by an entertainment of that kind, he recovered after dinner somewhat of his wonted courage, and under the influence of the valor so acquired he proclaimed that, in his opinion, Russia had sacrificed her treaty right to Poland. Having made the statement thus publicly, he felt that he could not do less than insert it into the dispatch to Prince Gortchakoff, with whom it was proposed to terminate the inglorious correspondence. He flattered himself, indeed, that so hostile an announcement, while not leading actually to a war, might enable him to ride off with something like a flourish, which his friends might construe into a triumph.

“ ‘And so the dispatch was sent off, formally bringing the correspondence to a close, and concluding with the grandiose announcement that, in the opinion of the British Government, Russia had forfeited the title to Poland which she had acquired by the Treaty of Vienna. But even this modest attempt to escape from disgrace was not destined to succeed. When the dispatch reached St. Petersburg it was shown to Prince Gortchakoff before being formally presented. ‘You had better not present this concluding sentence to me,’ is reported to have been the Prince's brief but significant observation. The hint was taken, the dispatch was sent back to England and submitted anew to the Foreign Secretary. Doubtless with disgust, but bowing to his inexorable destiny, he executed this new act of self-abasement. The offending sentence was erased by its author with the resolution of a Christian martyr. In this form it was sent back to Russia; and it still bears, as published to the world, in the bald mutilation of the paragraph with which it concludes and in the confusion of its dates, the marks of its enforced and reluctant revision.’

“ ‘The confusion of the dates is very significant. The dispatch was originally dated in September and refers to the dispatch of August 11th, as of the 11th ultimo. As accepted by the Prince it was dated in October, but still refers to the August dispatch as of the 11th ultimo.

Poles by denying them a reasonable degree of autonomy and the continued enjoyment of their national language and institutions. The government of the "autocrat of all the Russias" unchecked by the Liberal Powers and aided by Prussia crushed out the desperate resistance of the Polish patriots.

The net result of the false start of the powers was to humiliate Great Britain<sup>39</sup> and to mislead the unfortunate Poles, who might reasonably believe that the Liberal Powers would not withdraw after they had so far committed themselves by the peremptory and categorical language of their representations.<sup>40</sup>

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" 'The humiliation of England was complete. We had threatened and we had not performed. We had encouraged the Poles to believe that they might count upon our protection, and when we found that something more than brave words would be needed, we deserted them. That was the view taken abroad of Lord Russell's policy. It was treated with derision and contempt. In Russia there was at that time a very strong feeling of friendliness towards the English. But it was a social friendship, not a political appreciation, and I believe that was largely, perhaps one might say entirely, due to the great personal charm and popularity of Lord and Lady Napier. As a power to be reckoned with we had ceased to exist.' " (Lord Redesdale: *Memories*, Vol. I, p. 224-5.)

<sup>39</sup>See *Reminiscences of Count Vitzthum*, edited by Henry Reeve, vol. II, p. 250; *Correspondence of Sir William White*, edited by H. Southerland Edwards, p. 54-5.

<sup>40</sup>It would have been well for Lord John Russell had he taken pattern from Lord Palmerston's conduct of the Polish negotiations of 1831-33. July 3, 1832, in his instructions to Lord Durham, then on a mission to St. Petersburg, Palmerston warned him that the remonstrances of Great Britain and France, lacking as they did the support of Austria and Prussia, "...could not be effectual unless they had been supported by a threat of war—a threat to the execution of which so many obstacles were opposed both by the general state of Europe and by the negotiations in which, in concert with Russia, Great Britain has been, and still, is, engaged."

"In adverting, therefore, to the affairs of Poland," wrote Lord Palmerston in the same dispatch, "great delicacy and caution will be required. It would be inconsistent with the

It remains for us to show that the intervention of Great Britain, France, and Austria is to be classed as humanitarian. It cannot be doubted that the wish to protect the Poles from Russian oppression and to secure for them a reasonable recognition of their national aspirations was the motive back of the governmental initiative of the Western or Liberal Powers. It is reasonable to assume that this was the original impulse which caused the intervention when we note the extraordinary sympathy shown for the Polish insurrectionists in all parts of Europe.

The people of England and France and of the other countries of Europe had not forgotten the ruthless manner in which Nicholas I, in 1832, had crushed out the Polish uprising. Everywhere the Polish patriots found a strong and popular support. The excitement aroused in England, says Lord Redesdale, amounted to intoxication (*Memories*, Vol. II, p. 217). In the official representations which Napoleon III made at St. Petersburg, the question of Poland is spoken of as one which by exception is supported by all factions in France (*British State Papers*, Vol. 53, p. 827). From Stockholm, the British representative reported that Prince Czartoriski was given a warm welcome at a great banquet attended by two hundred of the notable citizens, and that he was received by the sovereign (*Ibid*, p. 853-8). From Berne came the report of Swiss sympathy and indignation at the brutal conscription of the Polish leaders (*Par. Papers* 1863, Vol. 75 [3150] No. 94). It was to be expected that Italy, the proponent of the rights of nationalities, would be deeply moved by the events in Poland (*British State Papers*, Vol. 53, p. 875, cf. *ibid*, p. 880).

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power and dignity of the British Empire to insist too strongly upon points which, from the considerations stated above, it might be inexpedient, if not impossible, to enforce by arms." (*British State Papers*, vol. 37, 1848-49, cf. p. 1439-1440.)



Evidently this sentiment in favor of the insurrectionists was too widespread and too profound to be ignored by governments dependent upon popular support.<sup>41</sup>

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<sup>41</sup>A few extracts from the Diplomatic Correspondence will show how conscious the governments were of this strong public sentiment in favor of the Poles.

The French note of February 18 contains the following passage: "But the Polish question more than any other is privileged to arouse in France the keenest sympathy of all parties. In this respect they are unanimous; the language employed by the most zealous defenders of Monarchy and religious doctrines differs only but slightly from that of the most advanced democratic organs. What can we answer to statements which are based upon public law [international law] and which do no more than appeal to the most incontrovertible principles. Not only are we powerless to reply to such articles, but, deriving as we do our strength from public opinion, we are obliged to take into account opinions which this country has entertained for so many years." (British State Papers, Vol. 53, p. 827.)

The subsequent note, presented April 17th, declares: "The insurrection of which the Kingdom of Poland is at present the theatre has awaked in Europe a lively anxiety, in the midst of a repose which no near event seemed likely to disturb. The lamentable effusion of blood of which this contest is the cause, and the painful incidents which mark it, are exciting, at the same time, an emotion as general as it is profound." (Ibid, p. 862, Translation in Parliamentary Papers, 1863, Vol. 75, Poland, [3150] No. 136.)

The British note dated April 10, but presented at the same time as the French note, alludes incidentally to the pressure of public opinion: "The general sympathy which is felt for the Polish Nation might of itself justify Her Majesty's Government in making, in favor of the Polish race, an appeal to the generous and benevolent feelings of His Imperial Majesty." (Ibid, p. 863.)

Further along in the same note: "The disturbances which are perpetually breaking out among the Polish subjects of His Imperial Majesty necessarily produce a serious agitation of opinion in other countries of Europe, tending to excite much anxiety in the minds of their Governments, and which might, under possible circumstances, produce complications of the most serious nature." (Ibid, p. 865, cf. similar ex-



Unfortunately the coöperating powers did not understand the perfect justification which humanitarian considerations could give to their concurrent intervention. The inevitable consequence of this misunderstanding was that they weakened the force of their action and wasted their strength in futile efforts to discover some other common ground upon which to base their demands. But despite all their efforts Great Britain and France did not, as will be seen, succeed in discovering any ground other than that by which they set so little store—humanity.

Neither England or France could base its action on the ground that the events in Poland were a menace to national peace and security such as to justify intervention on the generally admitted ground of self-preser-

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pressions in the Austrian note prepared for concurrent presentation, *ibid*, p. 861.)

In his note of August 11, Lord John Russell in reply to the complaints of Prince Gortchakoff, said: "It is true, however, that lively sympathy has been excited in Europe in favor of the Poles. In every considerable State where there exists a national representation,—in England, in France, in Austria, in Prussia, in Italy, in Spain, in Portugal, in Sweden, in Denmark,—that sympathy has been manifested. Wherever there is a national administration, the administration has shared, though with prudence and reserve in expression, the feelings of the legislature and the nation." (*Ibid*, p. 913.)

Even in Prussia, where the government had adopted Bismarck's policy of coöperation with Russia to crush out the Polish insurrection, there was a strong movement in favor of the Poles. In the Prussian House of Representatives, Herr Waldeck said, in the course of his scathing denunciation of Bismarck's policy: "There was a policy which Prussia might have followed; she might in a friendly manner have offered her advice to Russia, and warned her of the dangers she incurred by abandoning the road of legality and ordering the barbarous conscription which has called forth the present rebellion." (*British State Papers*, Vol. 53, p. 794, cf. *ibid*, p. 789.)

vation,<sup>42</sup> for it was easy for the Russian vice-chancellor to point out that the prolongation of the insurrection was due to the material assistance and the moral support which the Poles received from abroad.<sup>43</sup>

The failure of the intervening powers to police their territory and to prevent the Polish patriots from using it as a base of hostile operations would have to be justified before they were at liberty to blame Russia for negligence to which they were themselves patently contributory.<sup>44</sup>

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<sup>42</sup>See below § 16. In the opinion generally held by statesmen of that period national security or self-preservation was a sufficient and the strongest justification for action which otherwise would have been reprehensible interference. We do not wish to appear to approve of this argument, but merely to point out that it was not in point.

The peculiar situation of Austria permitted her alone to derive support from this argument of national security, and she did in fact use it with much force. (See British State Papers, vol. 58, p. 860-1.) Earl Russel referring to the Austrian justification on this ground remarks with seeming acquiescence: "The freedom of France and England from apprehensions of this kind is dwelt upon with marked distinctness." (Ibid, p. 813.)

<sup>43</sup>See British State Papers, Vol. 53, p. 833, 880-881, 895, 897, 903, 907. Cf. Earl Russell's attempted rejoinder, *ibid*, p. 913. Phillimore discusses the obligation of States to police their territory and to prevent its use as a base of hostile preparations. See Phillimore's Commentaries, 1 ed. 1854, Vol. I, § 217, p. 228-230. This question is considered below under § 15. An accusation of a similar nature was made by Russia in 1832, namely that the Polish insurrection was only sustained by the hope of foreign intervention. (Cf. Nesselrode to Lieven Jan. 3, 1832. British State Papers, Vol. 37, p. 1434.)

<sup>44</sup>If it should first be shown that intervention was justifiable upon some other ground, such as the violation of treaty rights or humanity, the failure of the intervening powers to police their territory could then be defended as in the nature of a passive or constructive intervention, or else it might have been regarded as retaliatory. As we shall later show that humanity was the real justification, we may rightly consider that this failure of the government to prevent its territory from

For the reasons just given, the Western Powers could not make much of a case when they appealed to Russia to refrain from prolonging a condition which was likely to disturb the peace of Europe.<sup>45</sup> Here also it was necessary to find some ground to justify the hos-

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serving as a base from which to carry on operations of war-like resistance to the Russian Government was a justifiable instance of negative or passive humanitarian intervention. We might say humanitarian intervention by indirection, or constructive humanitarian intervention.

There was perhaps some subconscious feeling of this justification for the failure to police the territory when in his note of August 11, 1863, Earl Russell, in reply to the complaints of Prince Gortchakoff, remarked: "Unless the general feeling in Poland had been estranged from Russia, the moral and material assistance afforded from abroad would have availed the insurgents little." (Ibid, p. 913.)

<sup>45</sup>In his representations of March 2, 1863, Earl Russell added to the treaty as a ground of justification the interest of European peace. He wrote: "Great Britain, therefore, as a party to the treaty of 1815, and as a power deeply interested in the tranquility of Europe, deems itself entitled to express its opinion upon the events now taking place." (British State Papers, Vol. 53, 805-6.)

The British note of April 10 contained the following: "The condition of things which has now for a long course of time existed in Poland is a source of danger not to Russia alone, but to the general peace of Europe." (Ibid, p. 865.)

The French concurrent note presented at the same date contained similar statements as to the regrettable complications likely to result from prolonged disturbances in Poland. (Ibid, p. 862.)

The Austrian note may perhaps have been the source of this attempt to find some common ground of action for Earl Russell in his instructions of April 4 to the British Ambassador at Paris wrote: "But the latter part [of the communicated Austrian note] appears to Her Majesty's Government very important. It shadows forth ulterior consequences which, according to the present views of the Russian Government, are too likely to be realized. These consequences, it is declared, may be calamitous to all Europe, and the conflicts which may then be revived may give rise, it is said, to complications to be regretted." (British State Papers, Vol. 53, p. 850. The Austrian note is given *ibid*, p. 861; cf. also p. 859.)

tile use of their territory by the insurgents before they could blame Russia for the disturbance of the European peace. Until they had absolved themselves they were to be regarded as in part responsible for the disturbance of which they complained, and this defect in their logic was not lost upon Prince Gortchakoff. The Russian vice-chancellor remarking upon Lord Russell's appeal to Russia as a member of the Society of European States to fulfil her duties of comity towards the other states, replied that Russia was too directly interested in the peace of Poland not to appreciate its international obligations. "It would be difficult," he added, "to affirm that she had in this respect met with a scrupulous reciprocity." At the close of this note he appealed to the powers who desired to see Poland pacified to strive on their part to check the spread of moral and physical disorders in Europe and thus to remove the principal source of the disturbances which alarm them for the future (see British State Papers, Vol. 53, p. 897, Cf. 833, 880-1, 895, 903, 907).

Russia's disregard of the stipulation contained in Article I of the Final Act of Vienna seemed to offer a justifiable basis for representations in behalf of the Poles. The British Government that had been mainly instrumental in securing the adoption of this Article in 1815, referred to it in 1863 as it had in 1832 and made it the principal ground of protest against Russian tyranny. (See British State Papers, Vol. 53, p. 806, 834, 836, 863-4, 898, 912-916, 918. For action in 1831-2, see *ibid*, Vol. 37, p. 1417, 1422, 1430, 1437, 1439-1444.)

Unfortunately this basis of action was neither wise in policy nor sound in law. It was not politically expedient because the French Government could not be expected to show much enthusiasm in supporting the provisions of a treaty which was known to have been dictated to France at the sword's point. There had,

furthermore, been so many modifications and violations of the Treaty of Vienna that no one could be certain what provisions were still in force and in how far any power was justified in making counterbalancing modifications to compensate for those which were inimical to its own interests. The most serious legal objection to the argument based upon the treaty was the obvious fact that a treaty cannot create a right of interference in the internal affairs of a sovereign independent state even though the government thereof signs and ratifies the act or sponson which attempts in express words to confer such a right.<sup>46</sup>

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<sup>46</sup>For a fuller discussion of this question, see below § 19. It is nevertheless true that a reasonable restriction of the rights of a sovereign state may be incorporated in a treaty and enforced by other states when such restriction is recognized as necessary for the security of all the states (see §§ 9 and 17). But it is evident from the diplomatic correspondence at the time of the negotiation of the treaty that the stipulation in question was not adopted as a result of any general understanding that it was for the common interest. It was adopted for two other reasons: firstly and mainly, because Great Britain feared Russia's preponderance in the east of Europe, (see *British State Papers*, Vol. 37, p. 1417-1420); and secondly, in order to assure to the Poles reasonable recognition of their national aspirations. How secondary this latter consideration was to Great Britain, who was mainly instrumental in securing the insertion of the article, is shown by her efforts to secure a complete partition of the Polish provinces rather than to permit the organization of a quasi-independent Poland under the sovereignty of Russia. (See *Parliamentary Papers*, 1863, Vol. 75 [3188] cited above.)

It would thus appear that the main reason for the insertion of the provisions in regard to Poland was to serve the political object that England and France had in view, namely to prevent Russia from acquiring full military control of Poland. (See also *British State Papers*, Vol. 37, p. 1417-1418.) Even though Russia signed the treaty, it could not give other powers a right of interference on political grounds.

We shall revert again to the value of the article as a basis of humanitarian intervention. In regard to the value of the

Although the Governments seem not to have understood this principle of international law, their ignorance could not save them from confusion and contradiction when they attempted to make the treaty a justification for acts which they would otherwise have considered as constituting an unjustifiable interference in the internal affairs of Russia.

It is not suprising that Prince Gortchakoff was willing to meet the British Government on this ground which was to be sure no *terra firma*, but a veritable quagmire (British State Papers, Vol. 53, p. 896, 897; *ibid*, Vol. 37, p. 1419, 1421, 1424, 1431-2). With a foot-

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treaty as a basis of action it will be of interest to quote certain passages from the diplomatic correspondence:

“In an ordinary case of civil war between a sovereign and his subject, foreign states can have no grounds for interference, even by advice or remonstrance; but there are circumstances peculiar to the Kingdom of Poland which make it in this respect an exception to the general rule.” (Palmerston to Lord Heytesbury, March 22, 1831; British State Papers, Vol. 37, p. 1416.)

“His Majesty’s Government is fully sensible of the delicacy of the questions at issue, involving, as they do, the relations between a sovereign and his subjects; matters upon which, under ordinary circumstances, and when those relations are not interwoven with the stipulations of treaties, the most well-meant and friendliest interposition must at best be of doubtful expediency.” (Palmerston to Lord Heytesbury, March 12, 1832, British State Papers, Vol. 37, p. 1436.)

But Lord Heytesbury seems to have had some understanding of the limits of interference based upon a treaty, for in his report of October 1, 1831, he writes:

“Indeed, it might be impossible for foreign powers to guarantee a particular and unchangeable form of government to any country.” (British State Papers, Vol. 37, p. 1423.) And further along in the same report Lord Heytesbury indicates of how little value he considered the Article as a basis for protest:

“I have,” writes the British Ambassador, “been constantly assured in reply, that the stipulations of the Treaty of Vienna will be strictly attended to, but this assurance amounts to little or nothing, for the stipulations themselves amount to little or nothing.” (*Ibid*, p. 1424.)

ing so insecure Earl Russell could hardly succeed in his battle of words to find a legal justification for the British intervention.<sup>47</sup>

But when all the specious grounds of support for intervention on the basis of the Treaty of Vienna have been refuted, it is still possible to consider the provisions of Article I of the Final Act as Russia's promise that she would grant to the Poles such reasonable recognition of their rights of self-government and nationality as should accord with the prevalent sentiments of humanity. Viewed in this light, Article I of the Treaty of Vienna would not authorize an unjustifiable interference in the internal affairs of an independent state, but would be merely the formulation of the rights which international law guarantees to a subject people. In the event of a failure to grant this minimum of right, any state would have the right, and all the nations would have the obligation, in so far as the circumstances would allow, to undertake an intervention on this ground of humanity. That is for the purpose of compelling the transgressing suzerain

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<sup>47</sup>Earl Russell seems to have been so ignorant of the fundamental principles of international law that he was not able even to refute the preposterous argument advanced by Russia that the treaty provision in favor of the Poles had been abrogated by the right of conquest after the suppression of the insurrection of 1832. (British State Papers, Vol. 53, p. 864; cf. *ibid*, vol. 37, p. 1417, 1428, 1432, 1438.) Professor Rossi in his review of Wheaton's work criticizes that writer for speaking of the "reconquest" of Poland. "One does not," says Rossi, "conquer oneself" (*Archives de droit et de legislation*, Vol. I, p. 356; Stapleton: Intervention, p. 136-7, in a somewhat ambiguous statement, falls into the same error as Wheaton and Russell.)



to fulfill his internationally recognized obligations towards the Poles.<sup>48</sup>

Again we are brought back to humanity as the basis of the action against Russia which the British Government vainly thought to find in the treaty alone.

Notwithstanding these attempts to find a ground of justification more satisfactory than humanity, the intervening powers did, withal, concurrently and sometimes incidentally, refer to considerations of humanity. But they did it hesitatingly—almost shamefacedly—as though this, the only juridical basis upon which their action could be defended, was not one which

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<sup>48</sup>Even in 1832 when Great Britain and France had no intention of doing more than intercede by friendly council in favor of the Poles, the existence of Article I was of great value as a formulation of Russia's obligation towards the Kingdom of Poland. This appears in Lord Heytesbury's report to Lord Palmerston of January 2, 1832, in which he wrote:

“It must not, however, be concluded that our efforts in favor of the Poles have been entirely thrown away. It will be sufficient to cast our eyes towards the Russo-Polish provinces not included in the Kingdom of Poland, and, consequently, out of the reach of foreign intervention, to be convinced of the contrary. In the Kingdom of Poland, setting out of the question those accused of assassination and the officers of the three corps of Kaminski, Rybinski, and Ramorino, who form a class apart, and who are now gradually returning to their homes, upon consenting to renew their oaths of allegiance, there are not above 20 individuals excluded from the amnesty, or who will suffer for their political conduct. But in the Russo-Polish provinces incorporated with the Empire, confiscation of property, exile, or deportation to Siberia are the general lot. Not an individual has been suffered to escape who took any active part in the Revolution. This different measure of punishment, though it speaks little, perhaps, in favor of the clemency of this Government, shows clearly the effect of foreign intervention. We may not have gained much; but we, at least, have the consolation of reflecting that the course pursued would have been infinitely more severe had we not taken the line we did.” (British State Papers, Vol. 37, p. 1430.)



they cared to present as the real justification of their intervention.<sup>49</sup>

It is to be regretted that the right of intervention upon the ground of humanity should have been so little understood. If the coöperating powers had justified their action upon the ground of humanity to prevent the oppression of the Poles, they might have overcome every argument of Russia, and they would have had back of them a very strong popular support in all parts

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<sup>49</sup>Earl Russell in his note of March 2, to the Russian Government expressed similar views: "However much Her Majesty's Government might lament the existence of such a miserable state of things in a foreign country, they would not, perhaps, deem it expedient to give formal expression to their sentiments, were it not that there are peculiarities in the present state of things in Poland which take them out of the usual and ordinary condition of such affairs." (Ibid, p. 806.) The peculiarities referred to were, of course, the provisions of the Treaty of Vienna.

Lord Russell, in his note of April 10 to Russia, repudiates completely any right of intervention upon grounds of humanity alone when he admits that in the absence of treaty stipulations the constitutional rights of the Poles might have been declared forfeited after the suppression of their revolt. (British State Papers, Vol. 53, p. 864.)

In a preceding portion of this same note Earl Russell may, perhaps, be considered by implication to deny humanity as a basis for intervention when he indicates that the sympathy of public opinion would have justified an "appeal"—that is, friendly intercession—"to the generous and benevolent feelings of His Imperial Majesty." Similar disclaimers of any right of intervention on the ground of humanity made in 1832 will be found in an extract already quoted. (See Palmerston to Lord Heytesbury March 12, 1832, British State Papers, Vol. 37, p. 1436.)

In his note of February 21, to the French Ambassador at London, M. Drouyn de Lhuys remarks of the disturbances prior to Prussia's interference by the signing of the Avenleben Agreement: "The lamentable incidents of the resistance of the population to a measure of internal administration could as yet only be regarded from a humanitarian view-point." The "only" is here significant. (British State Papers, Vol. 53, p. 809.)

of Europe. On this firm foundation, the intervening governments could have coöperated to secure the ends which they had in view. All the subtle and specious exchange of arguments could have been brushed aside, and Russia by her acts would have stood forth as a transgressor of the law of nations until such time as she was ready to conform to that law by granting the Poles a reasonable autonomy and recognition of their national aspirations.

Even although the intervening governments were unmindful of the true justification of their intervention, the statesmen directing the affairs of the intervening states seem to have felt out the law which they did not understand. By their acts they were carrying out unwittingly what we must consider to be clearly an instance of intervention on the ground of humanity. Gropingly and in a blundering fashion the coöperating powers felt their way along the right path. In their notes amidst irrelevant and extraneous verbiage we find embedded the arguments necessary to justify their action upon humanitarian grounds.

To make this clear and to state more precisely the grounds of the action taken, we need only to reproduce a few extracts selected from the various notes of protest.

The repeated reference to humanitarian considerations which we find in the representations of the coöperating powers were not confined to any one of the classes of acts which may be considered to justify humanitarian intervention, but the principal aim of their action was to prevent the oppression of the Poles through the abusive denial to them of a reasonable degree of autonomy and the right to the retention of their language and racial or religious institutions.<sup>50</sup>

.....<sup>50</sup> **\*PROLONGED DISTURBANCES:** In addition to protests against the oppression of the Poles, the intervening

As a fitting conclusion to this examination we can do no better than to reproduce the attempts to formulate and define the nature of Russia's obligation to refrain from the oppression of her Polish subjects:

states justified their action upon the ground of the recurrence and prolongation of disturbances in Poland:

The French note of April contained the following: "The characteristic of the agitation in Poland, M. le Duc, that which makes their exceptional gravity, is that they are not the result of a passing crisis. Effects which are reproduced in almost every generation cannot be attributed to purely accidental causes. These convulsions, which have become periodical, are the symptom of an inveterate evil; they bear witness to the impotence of the combinations which have been hitherto devised in order to reconcile the kingdom of Poland with the situation which has been created for it." (British State Papers, Vol. 53, p. 862; Translation in Parliamentary Papers, Vol. 75, Poland [3150] No. 136.)

The British note presented at the same time declared: "The disturbances which are perpetually breaking out among the Polish subjects of His Imperial Majesty necessarily produce a serious agitation of opinion in other countries of Europe, tending to excite much anxiety in the minds of their Governments, and which might, under possible circumstances, produce complications of the most serious nature." (Ibid, p. 865.)

In the previous British note of March 2nd, we find: "Since 1832, however, a state of uneasiness and discontent has been succeeded from time to time by violent commotion and a useless effusion of blood." (Ibid, p. 806.)

ANARCHY: Still another ground of justification was the anarchy in Poland and the violations of the rules of civilized warfare.

This ground was taken by Earl Russell in his conversation with Baron Brunnow, the Russian Ambassador. "In a former conversation," writes Earl Russell in his dispatch of April 10, "I had said to him that I could not be surprised that men driven to despair should commit wild deeds of revenge, or that the ferocious disciples of Mazzini should be guilty of assassinations; but that the acts of atrocity committed by the disciplined army of Russia excited, on the part of Her Majesty's Government, surprise as well as horror. Baron Brunnow had replied that dreadful crimes of savage cruelty had been perpetrated by the insurgents, and had given rise to.

The first document is Article I of the Final Act of the Congress of Vienna (see above, p. 91) in which the Poles were promised a constitutional union with Russia and a "distinct administration." The Poles were

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acts of retaliation. He informed me yesterday that General Berg would take command of the Russian army in Poland. He said that General Berg was an able commander, and was likely by his military arrangements to put an end to the insurrection. I replied that if General Berg was, as I believed, an officer of high repute, I hoped he would restore discipline in the Russian army in Poland, and punish those acts of insubordination and barbarous violence, which had hitherto been unrestrained. Baron Brunnow denied the truth of the stories in circulation upon this subject. (British State Papers, vol. 53, p. 866.)

We quote another passage from the same dispatch in which Earl Russell relates how he qualified the assurances which he had just given Baron Brunnow as to the pacific nature of the communication about to be made to Russia:

"But the state of things might change. The present overture of Her Majesty's Government might be rejected as the representations of the 2nd of March had been rejected by the Imperial Government. The insurrection in Poland might continue and might assume larger proportions; the atrocities on both sides might be aggravated and extended to a wider range of country. If in such a state of affairs the Emperor of Russia were to take no steps of a conciliatory nature, dangers and complications might arise not at present in contemplation." (British State Papers, Vol. 53, p. 866-7.)

The Spanish Government in their appeal to Russia "to pursue a conciliatory and merciful course" cited their own experience of civil wars, and remarked "that popular discontents cannot be suppressed by severity alone." (British State Papers, Vol. 53, p. 874.)

From Vienna Lord Bloomfield reported: "Much has been said of the want of discipline amongst the Russian troops in Poland, and to the almost total disregard of the authority of the officers are attributed most of the frightful massacres that are each day reported in the newspapers." (British State Papers, Vol. 53, p. 841.) In the same report Lord Bloomfield inclosed a translation from the *Fremden Blatt* giving details of these atrocities. (Ibid, p. 840-842.)

: : Lord Palmerston's instructions of November 23, 1831, to  
 : : Lord Heytesbury contained the following criticism of methods  
 : : employed by Russia in suppressing the insurrection of 1831-2:

further promised "Representation and national institutions" which were, it is true, by the terms of the Act to be "regulated according to the degree of political consideration that each of the governments to which they belong shall judge expedient and proper to grant them."<sup>51</sup>

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"From the submission of the Poles to the arms of His Imperial Majesty, Europe looks for the reëstablishment of law and justice, and not for acts of retaliation and vengeance; since whatever excuse such acts may find in the troubles of an intestine war, they could not be palliated if resorted to by a power which has subdued all opposition, and which cannot plead for its measures the necessity of any pressing emergency." (British State Papers, Vol. 37, p. 1428.)

Secretary Seward wrote to Mr. Motley, July 14, 1863: "The European states suffer long and forbear much with a nation that falls under the affliction of civil war, if it be only near home. They are very intolerant of a nation, on this continent, that suffers its domestic wrangles to break the peace of the world." (Diplomatic Correspondence, 1863, Part II, p. 926.)

**HUMANITY:** In certain passages of the diplomatic correspondence we find allusions to humanity as the justification for the representations without any specifications as to the particular action considered to violate the principles of humanity. (See British State Papers, Vol. 37, p. 1426; Ibid, Vol. 53, p. 813.)

<sup>51</sup>In his note of August 11, Earl Russell wrote: "The Empress Catherine in 1772 promised to the Poles the maintenance of their religion. The Emperor Alexander I in 1815 promised to the Poles national representation and national administration.

"These promises have not been fulfilled. During many years the religion of the Poles was attacked, and to the present hour they are not in possession of the political rights assured to them by the Treaty of 1815 and the constitution of the same year." (British State Papers, Vol. 53, p. 913.)

Discussing Russia's obligation under Article I with especial reference to the terms "representation" and "national institutions," Prince Gortchakoff in a conversation reported by Lord Napier remarked "...that under this Article the Russian Government remained the absolute arbiter of the form in which the representation and national institutions of Poland should be framed. The Emperor Alexander I, using his indisputable prerogative in a liberal and even in an enthusiastic

The overt acts by which Russia oppressed the Poles were well described by Lord Palmerston in a dispatch to Lord Durham, July 3, 1832:

“The Treaties of 1815, to which Russia was a party (not only the General Act of Congress of Vienna, but the separate Treaty between Russia and Prussia), clearly stipulate that the nationality of the Poles shall

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sense, had, some time after the conclusion of the Treaty referred to, spontaneously granted to the Kingdom of Poland a Representative Constitution which had not proved consistent with the peace and welfare either of Poland or Russia. That Constitution had never been imparted to foreign Powers as involving the execution of international engagements. We all know under what circumstances it had perished. What the Emperor Alexander did in the plenitude of his power, his successor in the exercise of the same power could revoke. The present Emperor, ever faithful to the principles of government which he applied in Russia, had applied these principles in Poland too, and perhaps in a larger measure than had been granted in any other portion of his dominions. The political Constitution proclaimed in Poland in the year 1861 embodied a complete autonomy,—national institutions with a modified representation adapted to the form of political existence in force under the Imperial Government. Poland was now ruled by institutions purely Polish. There was a directing Minister, a Pole, entertaining national sentiments of the most decided character; a Council of Administration composed of Poles; a Council of State containing Poles taken from the several ecclesiastical and civil orders of the community, and embodying some representative elements, in which general laws for the welfare of the Kingdom were elaborated; there were provincial, district, and municipal councils in descending order, all purely elective, charged with the local and material interests of the country. This national representation was not cast in the same mould as that which was designed by the Emperor Alexander, or that which existed in England, but it formed, nevertheless, a system of national and representative institutions adapted to the condition of Poland and its relations with Russia. Her Majesty's Government, composed of practical statesmen, the representatives of a practical nation, would not surely contend that there was only one valid and useful form of political institutions equally applicable to all countries, that, namely, which existed in England, and which



be preserved. But statements have reached His Majesty's Government which, if true, tend to show a deliberate intention on the part of the Russian Government to break down the nationality of Poland, and to deprive it of everything which, either in outward form or in real substance, gives to its people the character of a separate nation.

“The abolition of the Polish colors; the introduction of the Russian language into public acts; the removal to Russia of the national library, and public collections containing bequests made by individuals upon specific condition that they never should be taken out of the Kingdom of Poland; the suppression of schools and other establishments for public instruction; the removal of a great number of children to Russia on the pretence of educating them at the public expense; the transportation of whole families to the interior of Russia; the extent and severity of the military conscription; the large introduction of Russians into the

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was successful there. Nor would Her Majesty's Government, which professed non-intervention as the rule of their foreign policy, deviate from that principle now by interfering in the domestic concerns of another State. The Kingdom of Poland enjoyed an absolute administrative independence. Even the Department for Polish Affairs in the Russian capital had been abolished. The only institution common to the two countries now was the army. The new institutions granted to Poland, alluded to above, opened a wide field of activity and material prosperity to the country. But this was not all. The Imperial Government, in restoring the educational establishments of the Kingdom, had offered to the people the resources of intellectual culture and satisfaction. If to these institutions we added the guarantee by which they were all preserved, the personal character of the Emperor, who cherished an equal solicitude for the good of all his subjects, we should have a sufficient security for the future welfare of Poland, though the scheme might exclude the peculiar form of Representative Government applied in Great Britain, and perhaps exclusively appropriate to its condition.” (British State Papers, vol. 53, p. 834-5.)

public employments in Poland; the interference with the National Church; all these appear to be symptoms of a deliberate intention to obliterate the political nationality of Poland, and gradually to convert it into a Russian province." (British State Papers, vol. 37, p. 1440.)

In response to Prince Gortchakoff's intimation that Russia was "ready to enter upon an exchange of ideas upon the ground and within the limits of the Treaty of 1815," Earl Russell before making any definite proposals found it "essential" so he said to point out that there were "two leading principles upon which," as it appeared to the British Government, "any future government of Poland ought to rest" (British State Papers, Vol. 53, p. 898).

Earl Russell states the first of these to be: "...the establishment of confidence in the government on the part of the governed" (Ibid, p. 898). Earl Russell then referred to the views of Alexander I relative to Poland and laid particular emphasis upon the expression "...with a national administration congenial to the sentiments of the people," which the Tsar had used in describing his plan for erecting the Duchy of Warsaw "together with the Polish provinces formerly dismembered into a kingdom under the dominion of Russia" (British State Papers, Vol. 53, p. 898).

"The next [second] principle of order and stability," Earl Russell considered to be: "...the supremacy of law over arbitrary will" (Ibid, p. 899). Continuing, Earl Russell said: "Where such supremacy exists, the subject or citizen may enjoy his property or exercise his industry in peace, and the security he feels as an individual will be felt in its turn by the government under which he lives."



“Partial tumults, secret conspiracies, and the interference of cosmopolite strangers will not shake the firm edifice of such a government<sup>52</sup>. (Ibid, p. 899.)

Under the circumstances then existing Earl Russell stated that it appeared to his government that “nothing less than the following outline of measures should be adopted as the basis of pacification.

“1. Complete and general amnesty.

“2. National representation, with powers similar to those which are fixed by the Charter of the 15th-27th November, 1815.

“3. Poles to be named to public offices in such a manner as to form a distinct national Administration, having the confidence of the country.

“4. Full and entire liberty of conscience; repeal of the restrictions imposed on Catholic worship.

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<sup>52</sup>This statement of Earl Russell does not seem quite in harmony with his frank admission to the Austrian Ambassador, Count Apponyi, that it might be necessary ultimately to restore the independence of Poland (British State Papers, Vol. 53, p. 831; cf. similar statement by Gortchakoff, *ibid*, p. 833). In the course of this same conversation as reported by Earl Russell himself he also outlined his ideas as to what was necessary to pacify Poland as follows: “Russia could only govern Poland in one of two ways. The one was that of the Emperor Nicholas, that of keeping her submissive and degraded; extinguishing her language; compelling her by force to change her religion. This mode was repugnant to all received notions of justice and clemency.

“The other was the mode of Alexander I: protecting her from the hatred and revenge of the Russians, by giving her the guarantee of popular institutions and a local administration entirely separate from that of Russia.

“Nothing less would suffice. The late conscription was a proof of it. The law of recruitment of 1859 was a fair and just law; but it was wanting in some formality, and when it suited the despotism of Russia to substitute an arbitrary, unjust, and cruel measure for the equal law which had been proclaimed, there was not a moment's hesitation in doing so. I conceived there was no middle line between a system of oppression and a system of free and just government.” (British State Papers, Vol. 53, p. 831, Cf. *ibid*, p. 865, 874.)

“5. The Polish language recognized in the Kingdom as the official language, and used as such in the administration of the law and in education.

“6. The establishment of a regular and legal system of recruiting.

“These 6 points might,” Earl Russell added, “serve as the indications of measures to be adopted, after calm and full deliberation.

“But it is difficult, nay, almost impossible, to create the requisite confidence and calm while the passions of men are becoming daily more excited, their hatreds more deadly, their determination to succeed or perish more fixed and immovable” (British State Papers, vol. 53, p. 899-900).

The British Government speaking through Viscount Castlereagh, Viscount Palmerston and Earl Russell defined the limitations which international law placed upon Russia to prevent the oppression of her Polish subjects and to assure to them a reasonable recognition of their national institutions and aspirations.

In so far as these limitations to prevent that abusive use of power which we call oppression were correctly stated they will apply to and will limit the action of any empire over the alien races and peoples held under its paramount authority.

It is natural to apply them now to Ireland and to see in how far Great Britain has herself observed the rules which she proposed in the case of Poland.

The United States, in 1898, intervened in Cuba on the ground of humanity to put an end to the shocking treatment which the military authorities were inflicting upon the non-combatant population in their futile efforts to suppress the insurrection.<sup>53</sup> This humanitarian intervention was undertaken in response to the

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<sup>53</sup>“ And, thirdly, there is the argument based upon the claims of humanity. So long as the rules of civilized warfare

widespread feeling that the stubborn and prolonged resistance of the Cubans justified their claim to a larger measure of independence than Spain seemed willing to

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were observed, so long, that is, as the non-combatant population was not interfered with, there was little choice between the two parties. Occasional atrocities might be committed by either side, but neither side was so conspicuous a sinner as to warrant outside interference. The Cubans at least held their own. But there came a change of policy. The non-combatant country population was forced to settle within the range of the guns of the Spanish intrenched in the towns, and there, destitute of food, or of the means of growing or getting food, it starved." (T. S. Woolsey, *America's Foreign Policy*, p. 63-4; see also Moore's Digest, VII: 212 f.)

The correspondence relative to the treatment of the Cuban insurrectionists during the long struggle of 1868-1878 touches upon the same question of humanitarian intervention. Secretary Fish even went so far as to take the initial steps looking toward a collective action by the powers. See Secretary Fish's dispatch No. 266 to Mr. Cushing, 1875, printed by Chadwick (*Diplomatic Relations with Spain*, p. 375). Captain Mahan says of the action of the United States in 1898: "...when we ourselves last year, rejected intermediation, loosed the bonds from Cuba, and lifted the yoke from the neck of the oppressed." (Some Neglected Aspects of War, p. 44; cf. *ibid*, p. 74-5.)

In a campaign speech (August 28, 1920), President—then Senator—Harding, quoting from his speech in the Senate (April 4, 1917), said of American intervention in Cuba: "We unsheathed the sword some eighteen years ago for the first time in the history of the world in the name of humanity, and we gave proof to the world at that time of an unselfish nation." (Reported in the *N. Y. Sun*, August 29, 1920.) Mr. Harding was probably referring to the extraordinary disinterestedness of our action when he called this humanitarian intervention the first instance in the history of the world, for certainly he must have been aware of the many other instances of humanitarian intervention which have occurred.

This intervention has sometimes been classed—erroneously I believe—as an instance of self-help for the purpose of removing an international nuisance. We have already entered into a discussion of this theory, see above § 8.

accord.<sup>54</sup> The United States had other grounds for intervening, as will generally be found to be the case in instances of intervention for humanity.<sup>55</sup>

The most recent case in which a popular appeal for intervention on the ground of humanity to prevent what is alleged to be the ruthless suppression of reasonable nationalistic aspirations is that of Ireland. The student will find it interesting to apply the language of the intervening powers in Poland in 1863 to the case of Ireland in 1921. There have been undoubted

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<sup>54</sup> "...it is probable that endless negotiation would never have brought Sagasta and the Queen Regent to an admission of Cuban independence." (T. S. Woolsey: *America's Foreign Policy*, p. 83.)

<sup>55</sup> "These are the three justifying reasons, then, for intervention—for the attempt by national action, to heal this open sore: the burden of neutrality; the dictates of our commercial interests; the call of humanity. Any one of these is strong; together they are very nearly convincing." (T. S. Woolsey, *America's Foreign Policy*, p. 64-5.)

The Joint Resolution of Congress approved April 20, 1898, justified the American intervention in the following words:

"Whereas the abhorrent conditions which have existed for more than three years in the island of Cuba, so near our own borders, have shocked the moral sense of the people of the United States, have been a disgrace to civilization, culminating as they have in the destruction of a United States battleship, with two hundred and sixty-six of its officers and crew, while on a friendly visit in the harbor of Havana, and cannot longer be endured...."

It is further to be noted that this same resolution, instead of referring to the rights of the United States to redress, proceeds, after the recognition of the independence of Cuba, to declare, "Second, that it is the duty of the United States to demand and the Government of the United States hereby demand, that the Government of Spain at once relinquish its authority and government of the island of Cuba, and withdraw its land and naval forces from Cuba and Cuban waters."

The diplomatic correspondence exchanged between the two governments shows clearly that the motive of humanity was never lost from view, although it is true that the United States repeatedly referred to its own interests as a justification for the numerous protests which it presented to the Spanish Government.

injustices and abuses of force to record in the long and miserable history of British rule in Ireland. There have been periodic outbreaks and insurrections, and usually there have been acts of reprisal and barbarity on both sides, so that we may fairly say that the presumption that Great Britain has treated Ireland with due consideration is shaken to such a degree as to permit other states to examine the question whether it is not incumbent upon them to intervene. To answer this query it will be necessary to decide whether the fault lies with Great Britain for the continuance of an unjust treatment or for the failure to act with sufficient promptness in according necessary reforms.<sup>56</sup>

The Irish element in the United States and their sympathizers, including of course all the strongly anti-British groups, have brought to bear upon the government a powerful influence for intervention, but it would appear that they have met with no success beyond the adoption of resolutions in Congress. At the time of the discussion of the ratification of the Versailles Peace Treaty with Germany, the following reservation (No.

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<sup>56</sup>The answer to this question will vary with the examiner's prejudices. Perhaps an unbiased observer would find that the British Government has been generous and expeditious in reforms and projects for granting the fullest possible measure of autonomy to the Irish. We have to remember that England's national security requires that she should prevent Ireland's serving as a fulcrum for the lever of any hostile power. Furthermore, the principles of justice repel the idea that the less numerous but more thrifty and prosperous Protestants should be handed over to the control of the Catholic majority. There is another consideration, which is the determination of in how far Irish support of Great Britain's enemies in the last war should give her reason to pause in granting larger opportunities for mischief in the event of another war. It is doubtful, if Ulster were not given over, whether the Irish would be satisfied with any measure short of absolute independence, and an independence of which they should have all the advantages and none of the burdens.

15) was amongst those adopted: "In consenting to the ratification of the Treaty with Germany the United States adheres to the principle of self-determination and to the resolution of sympathy with the aspirations of the Irish people for a government of their own choice adopted by the Senate June 6, 1919, and declares that when such government is attained by Ireland, a consummation it is hoped is at hand, it should promptly be admitted as a member of the League of Nations."<sup>57</sup>

We shall discuss the justification of such action more fully when we consider the limits which the principle of non-interference imposes (see below, § 13.)

Sir Edward S. Creasy has formulated the ground of justification for intervention in favor of self-determination:

"Where we intervene in behalf of a grievously oppressed people, which has never amalgamated with its oppressors as one nation, and which its oppressors have systematically treated as a alien race, subject to the same imperial authority, but in other respects distinct, the distinction being the distinction between the privileged and burdened, between honored and degraded, between fully protected and ill protected by law in primordial rights of security for person and

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<sup>57</sup>The above resolution was offered by Senator Gerry, on March 18, and adopted by a vote of 38 yeas to 36 nays, and it became Reservation No. 15 to the treaty. An attempt by Senator Thomas to add to the reservation a declaration of sympathy with Korea was rejected by a vote of 34 yeas to 36 nays. A motion by Senator Lodge to amend it by omitting the clause declaring the adherence of the United States to the principle of self-determination was rejected by a vote of 37 yeas to 42 nays, and upon being later moved in the Senate by Mr. Calder the same motion was laid on the table by a vote of 51 to 30. Senator Sterling attempted in the Senate to strike from the reservation the words "a consummation it is hoped is at hand" but the attempt failed by a vote of 70 to 11." (Note by George A. Finch: International Conciliation pamphlets No. 153, p. 407-8.)

property—and the distinction being hereditary, permanent, and practical.

“And even when a case appears to fall within this third class of exceptions, we must scrutinize it very carefully, before we admit it to that character; and great care must be taken lest there be a violation of the principles of rights of property, of dominion, or of Empire, whether acquired by compact or by prescription....”

“Before we approve of Intervention in behalf of an oppressed subject race, it ought to be clear that the non-amalgamation of the two races has been due entirely to the haughty injustice of the dominant race, and that no fair hope of equal laws and equal franchises has been held out to the subjugated and down-trodden nation. Unless these limitations to the exception are strictly attended to, interventions in behalf of what it is now common to term oppressed nationalities are likely to prove the sources of as much unjust war and misery to mankind, as have ever been brought about by interventions in behalf of what used to be termed the right divine of kings, and of the sacred cause of legitimate government.” (E. S. Creasy: *First Platform of International Law*, p. 303-4.)

It will be noticed from the context that Creasy implies that intervention would only be justifiable when undertaken to help an oppressed race to resist new acts of tyranny and encroachments upon its rights, but no state would be justified in inciting a subject people to revolt against existing wrongs or inveterate abuses.

#### § 8(c). UNCIVILIZED WARFARE

We have already seen that violations of the laws of war, in a conflict between nations are, when sufficiently serious or numerous, a just ground for the intervention



of third states. In the case of civil wars or insurrections, similar violations have frequently led to intervention on the ground of humanity. Even Hall (4 ed., § 92, p. 303), who is so severe a critic of humanitarian intervention, seems to admit internecine war as a cause which would be an exception to the general rule that "a state must be allowed to work out its internal changes in its own fashion."

Sheldon Amos, speaking of insurrection, says: "Gross acts of inhumanity persisted in on either side may, on grounds of humanity, properly precipitate intervention." (Amos: Political and Legal Remedies for War, 1880, p. 158. See also Heffter, *Europaeisches Voelkerrecht*, § 46.)

The collective intervention of England, France and Russia to put a stop to the long civil war in Greece (1827) was timed to prevent the complete subjugation of the Greek people, and for that reason the motive of the intervention would seem to have been to protect the rights of self-determination, rather than to put an end to the conflict and the uncivilized methods by which it was conducted.<sup>55</sup> But it has usually been classed as an instance of humanitarian intervention upon this latter ground, and in deference to the many

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<sup>55</sup>The case of Greece is precisely similar to that of Belgium. Greece never achieved a *de facto* independence; on the contrary, at the moment of the European intervention, the Greek patriots were on the point of succumbing. The European Powers did not *recognize*, they *saved* Greece. As a matter of European policy, they thought fit to act in a manner decidedly hostile towards Turkey. The battle of Navarino may have been an 'untoward event,' but it was the natural and almost inevitable consequence of a forcible intervention to prevent the Turkish Government from reducing its subjects to submission." (Historicus [Sir Vernon Harcourt] on International Law, 1863, p. 6.)



authorities who have considered it as such we will so treat it.<sup>59</sup>

In 1875 and 1876, Europe was deeply stirred by a recurrence in Turkey of persecutions and outrages. Mr. Morley has described the situation as follows: "Fierce revolt against intolerable misrule slowly blazed up in Bosnia and Herzegovina, and a rising in Bulgaria, not dangerous in itself, was put down by Turkish troops dispatched for the purpose from Constantinople, with deeds described by the British agent who investigated them on the spot, as the most heinous crimes that had stained the history of the century. The consuls of France and Germany at Salonica were murdered by the Turkish mob. Servia and Montenegro were in arms. Moved by these symptoms of a vast conflagration—"

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<sup>59</sup>Strauch (Interventionslehre, p. 277), says the powers intervened because of the way in which Ibrahim Pasha conducted the war.

Oppenheim says: "Thus Great Britain, France, and Russia intervened in 1827 in the struggle between revolutionary Greece and Turkey, because public opinion was horrified at the cruelties committed during this struggle." (International Law, Vol. I, p. 194; cf. also Creasy: First Platform of International Law, p. 300-301 and notes.)

Stapleton expresses a similar opinion: "It was not until the mode in which hostilities were conducted by the Turkish general, Ibrahim Pacha, became at variance with the recognized rules of civilized warfare, so as to give every European State a right of war against Turkey, that he entertained the idea of a forcible intervention. It was evident that the Pacha was carrying on a war of extermination—wherever there was the slightest resistance, he massacred all the males, and sent the women and children into slavery in Egypt. He was laboring to blot out of existence a whole Christian people, and to establish a new Barbary State on the shores of the Mediterranean, in the very midst of Europe. Mr. Canning held this to be a *casus belli*, giving all nations a right to interfere by force, and accordingly he consented to the Greek treaty, which admitted of a forcible interference, if necessary to prevent the consummation of this atrocious design." (A. G. Stapleton: Intervention, p. 32.)

gration, the three imperial courts of Russia, Austria, and Germany agreed upon an instrument imposing on the Turk certain reforms, to be carried out under European supervision. To this instrument, known as the Berlin memorandum, England, along with France and Italy, was invited to adhere (May 13). The two other Powers assented, but Mr. Disraeli and his cabinet refused—a proceeding that, along with more positive acts, was taken by the Turk and other people to assure the moral support of Great Britain to the Ottoman, and probably to threaten military support against the Russian.

“This rejection of the Berlin memorandum in May marked the first decisive moment in British policy.” (Morley: *Life of Gladstone*, Vol. II, p. 548-9.)

The atrocities committed by the Turks stirred the sympathy of the people in all parts of Europe. In Russia the sentiment for intervention was especially strong because of the deep religious feeling of the masses and the traditional hatred of the Turk. Furthermore, the Russian Government in lending its support might with reason expect to secure some rights of protection over the Christian population of Turkey—an aim it had long cherished. But in Great Britain the Disraeli government was not willing to see Turkey in any danger of coming under the control of Russia, and Lord Derby, the Secretary of State for Foreign Affairs, turned a deaf ear to all appeals for coöperation to organize collective intervention on the ground of humanity.

The governments of Russia, Austria, and Germany tried at first to draw up a plan of reform, and submitted it to Great Britain, France, and Italy. The two latter accepted, but Lord Derby hesitated until it was found that the Sultan was willing to accept the project (Andrassy Note, January 31, 1876). Then came the

murders of the French and German Consuls at Salonica, and the three imperial governments agreed upon the Berlin memorandum. It was accepted by France and Italy, but Lord Derby declined and the memorandum was never presented.

Early in July, 1876, Serbia and Montenegro, previously restrained by Russia, declared war on Turkey. In the course of the negotiations for an armistice, Russia mobilized 200,000 men on the Turkish frontier. The next step was a conference of the powers in Constantinople, December, 1876, to January, 1877, at which Lord Salisbury represented Great Britain. This conference broke up without reaching any result.

After the close of the conference, the Porte entered into negotiations with the revolted provinces of Serbia and Montenegro. The great powers meanwhile signed, March 31, 1877, an agreement known as the London Protocol, which set forth the conclusions of the powers relative to the pacification of the Turkish provinces. But Lord Derby accompanied his signature with the following declaration: "Inasmuch as it is solely in the interests of European peace that Her Britannic Majesty's Government have consented to sign the protocol proposed by that of Russia, it is understood beforehand that in the event of the object proposed not being attained, namely, reciprocal disarmament on the part of Russia and Turkey, and peace between them, the protocol in question shall be regarded as null and void." (Foreign Relations, 1877, p. 573.) After such an invitation, it was not to be expected that the Turkish government would do other than reject the terms of the powers.

The Disraeli government was evidently sparing no effort to shield the Turk and to minimize the crimes of

which he was guilty.<sup>60</sup> Lord Granville wrote Gladstone (February 27, 1877, *Life of Lord Granville* by

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<sup>60</sup>The important confidential correspondence recently published in the 6th volume of Buckle's *Life of Disraeli* shows that the British Premier was unfortunately committed to defending Turkey against the outcry at the Bulgarian atrocities before he knew the truth of the accusations. It was natural that he should rely upon being informed by the British Ambassador, Sir H. Elliott (*Buckle's Life of Disraeli*, vol. VI, p. 64), of all that was going on in the Balkans. In a letter of December 2, 1876, Disraeli wrote to Sir Stafford Northcote relative to the popular demonstrations in favor of the oppressed Christians:

"Elliott's stupidity has nearly brought us to a great peril. If he had acted with promptitude, or even kept himself, and us, informed, these 'atrocities' might have been checked. As it is, he has brought us into the position, most unjustly, of being thought to connive at them.

"But when we have committed a mistake, or find ourselves in difficulties, the best thing is to turn them into 'commodities,' as Falstaff says, or something like it. The 'atrocities' will permit us to dictate to the Porte. That was the meaning of the telegram respecting which you wrote to me. It is to be hoped, that the leading part, which England may take, in obtaining an armistice, and afterwards in the preliminaries, will make the excited 'Public' forget, or condone, the Elliotiana.

"I hope this may be effected long before your meeting." (*Buckle: The Life of Benjamin Disraeli*, 1920, vol. VI, p. 51.)

In a letter the next day to Lord Salisbury, he remarks: "Had it not been for those unhappy 'atrocities' we should have settled a peace very honorable to England, and satisfactory to Europe.

"Now, we are obliged to work from a new point of departure, and dictate to Turkey, who has forfeited all sympathy..." (*Ibid*, p. 52.)

See Queen Victoria's opinion. (*Ibid*, p. 64.)

But having taken his stand, Lord Beaconsfield was, as the above letter indicates, too consummate a politician to be willing to weaken his prestige for the mere purpose of rectifying his mistake. Thenceforth we find that he continues to minimize the misdeeds of the Turk, although he admits that there is necessity for reform.

Lord Edward Fitzmaurice, Vol. II, 1905, p. 164), “. . . . Derby last Tuesday again attributed the ‘horrors’ to the feebleness of the Turkish Government, whereas it was the only thing in which they have shown any energy.”

Russia declared war and invaded Turkey to perform her manifest duty of protecting the Christian population of Turkey from the inhumane treatment to which they were being subjected.<sup>61</sup> The Gortchakoff circular dispatch of April 7-19, giving the reasons for Russia's making war, discussed the ill-treatment of the Chris-

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The correspondence also shows how slow the leaders of the opposition, Lord Granville and Lord Hartington, were to take up the question. They supported rather than opposed the Turkophile policy of the government, and seem to have lacked sympathy with the popular issue which Gladstone raised. (Ibid, p. 26 passim, p. 118.)

<sup>61</sup>Russia was of course strongly actuated by her desire of acquiring new territory in the Balkans. With this object in view, she had signed a secret agreement with Austria. (Buckle: Life of Disraeli, 1920, vol. VI, p. 115-6.) It is this consideration which leads Professor Woolsey to write: “Thus, too, Russia intervened, in 1877, in behalf of Bulgaria. It was based in theory upon religious sympathy and upon humanity. It was a move, in fact, upon the Straits and Constantinople, in pursuance of Russia's century-long program.” (T. S. Woolsey: America's Foreign Policy, 1898, p. 74.)

But even though conquest may have been the motive of the Russian Government, humanitarian intervention to prevent the inhumane treatment of the Christians was the justification of Russia's intervention.

Mr. Buckle, who writes with a sympathetic pen, thus describes what Disraeli believed should be the attitude of his government: “It could not intervene, as in the Crimean War, on Turkey's behalf, owing to her misconduct and the consequent alienation from her of popular sympathy in Britain. It should therefore adopt a position of neutrality in the war, but of watchful and conditional neutrality, and should at the outset obtain a pledge from Russia to respect British interests in Turkey, such as Constantinople, Egypt, and the Suez Canal.” (Buckle: Life of Disraeli, 1920, vol. VI, p. 134.)

tian population and the futile efforts of the powers to persuade Turkey to inaugurate reforms, and concluded: "In assuming this task, our august master fulfils duties imposed upon him by the interests of Russia, whose peaceful development is hindered by the permanent disturbances of the East. His Imperial Majesty has the conviction that he responds at the same time to the sentiments and interests of Europe." (Foreign Relations, 1877, p. 586.)

Lord Derby in reply, March 1, 1877, defended the Turkish government and blamed Russia for not allowing further opportunity for negotiations. He also charged that Russia by thus intervening alone had violated the treaty of Paris of March 30, 1856. Lord Derby's dispatch concludes: "In taking action against Turkey on his own part, and having recourse to arms without further consultation with his allies, the Emperor of Russia has separated himself from the European concert hitherto maintained, and has, at the same time, departed from the rule to which he himself had solemnly recorded his consent. It is impossible to foresee the consequences of such an act. Her Majesty's Government would willingly have refrained from making any observations in regard to it; but as Prince Gortchakoff seems to assume, in a declaration addressed to all the governments of Europe, that Russia is acting in the interest of Great Britain and that of the other powers, they feel bound to state, in a manner equally formal and public, that the decision of the Russian Government is not one which can have their concurrence or approval." (Foreign Relations, 1877, p. 587.)

The Bulgarian atrocities brought Gladstone from his retirement to champion the cause of the down-trodden Christians, but for many reasons he did not succeed in overturning the policy of the government

until the general election, when the return of the Liberal party may in some measure be considered as a vote of censure on Disraeli's failure to allow England to support her part of the burden of intervening to prevent the abominable atrocities perpetrated by the Turks on the Christians under their sway.<sup>62</sup> The Eng-

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<sup>62</sup>A decade before these events, Lord Lyons, when British Ambassador to Constantinople, in a letter to Lord Stanley of April 10, 1867, gives us the following account of the condition of the Christians in Turkey, and the intolerance of which they were the victims:

“Reports from the Consuls on the treatment of the Christians will have been pouring in upon you. The greater part of the grievances of the Christians are the result of bad government and bad administration of justice, and affect Mussulmans and Christians alike. Their peculiar grievances are their practical exclusion from the high offices of the State, the rejection in many cases of their evidence in the Law Courts, and what is most intolerable, the position in which they stand socially and politically with regard to the Turks. The Turks will not look upon them as equals and cannot trust them. In fact the Christians cannot feel loyalty to the Government because they are not trusted and employed; and they cannot be trusted and employed because they are not loyal to the Government. It is a perfect example of a vicious circle. It is useless to deny that the position of a Christian subject of the Porte is a humiliating position, and it is vain to expect that within any reasonable time the Christians will look upon the existing Government as anything but an evil to be endured or possibly even upheld as a less evil than revolution, but nothing more.” (Lord Lyons: *A Record of British Diplomacy*, by Lord Newton, Vol. I, p. 167.)

The motive put forward for the various interventions in Turkey has usually been the safety of Europe, but in certain instances, among which was this one, the real motive has been humanity. Professor J. B. Moore gives this as an example of intervention to put an end to intolerable conditions (Moore's *Digest*, Vol. IV, p. 3). Freeman Snow (in the syllabus to his valuable *Cases and Opinions on International Law*, 1893, p. xxiii) classes it in the same category with the case of Greece, 1826. Morley in his *Life of Gladstone*, speaking of this incident says (Vol. II, p. 555): “Humanity was at the root of the whole matter; and the keynote of this great crusade was the association of humanity with a high policy worthy



lish historian, J. R. Green, well says in a letter quoted by Morley: "I begin to see that there may be a truer wisdom in the 'humanitarianism' of Gladstone than in the purely political views of Disraeli. The sympathies of people with peoples, the sense of a common humanity between nations, the aspirations of nationalities after freedom and independence, *are* real political forces; and it is just because Gladstone owns them as forces, and Disraeli disowns them, that the one has been on the right side, and the other on the wrong in parallel questions such as the upbuilding of Germany or Italy. I think it will be so in this upbuilding of the Slave."<sup>63</sup> (John Morley, *Life of Gladstone*, Vol. II, p. 561.)

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of the British name." Captain Mahan, who is known as an Anglophile nevertheless speaking with approval of Russian intervention, says: "...when Russia, in 1877, acting on her own single initiative, forced by the conscience of her people, herself alone struck the fetters from Bulgaria." (A. H. Mahan: *Some Neglected Aspects of War*, p. 44; cf. also p. 48.)

<sup>63</sup>Lord Blachford, a practical statesman of long experience, whom it is said Lord Granville wished to become permanent Under Secretary of State for Foreign Affairs and whose talent and grasp of mind Cardinal Newman considered preëminent, discusses Russia's intervention in a letter dated May 15, 1878:

"1. I dare say you are right in saying that there is a large section which upholds war against the Turks as 'a crusade'—the 'Pall Mall' is always saying so. But I never myself happened to see any person in the flesh who advocated it—or to read any printed or written paper in which it was avowed or could be inferred.

"2. I dare say that the feelings of Russians are partly crusading, partly Panslavist—just as my feelings might be partly sportsmanlike and partly domestic, if I shot a wolf which was tearing to pieces my brother—but the basis of my action would be the desire to save a human being from a savage brute. The English who felt strongly about Bulgarian atrocities were neither Slav nor 'Orthodox.'

"3. As you allow of a war for 'suffering humanity' you of course do not agree with the passage of Mackintosh which you



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quote (unless you explain it away)—neither do I.<sup>a</sup> It seems to me transparently rhetorical. It is plainly much more wicked to attack on insufficient grounds a prosperous and virtuous government than a corrupt and desolating one. In one you injure the people, in the other only the rulers and their armies, with (supposed) benefit to the people. It is also plainly a subject of regret that a *good* government should be destroyed, while it may be a subject of just and stern rejoicing that, by whatever agency, a *bad* one should be destroyed, and its subjects transferred to those by whom they will be better used.

“4. Of the past history of Russia I know next to nothing. I only see with my eyes on maps the respective annexations of England and Russia during the last century and a quarter, and am astounded at the fact that England should assume the position of accuser in this respect.

“5. I am disposed to look leniently on our minister’s omission to notice the hint about Bessarabia. So long as independent Roumania lies between Turkey and Russia I cannot see why 50 or 60 miles more or less of sea coast should signify. Russia’s crime (which is very disgusting) is in taking it *against the will of her ally*, which did not appear till the Treaty of S. Stefano (and perhaps does not now much concern *us*; unless we want a quarrel).

“6. I agree with you in not confining the delinquencies of England to a single act (the Berlin Memo.). I begin by hating with my whole soul, what may be called our traditional policy (avowed by Palmerston and Beaconsfield) of bolstering up, for our own purposes, such a desolating and loathsome oppression (I conceive these words to be chosen with accuracy) as Turkey. Then I think it was our bounden duty to retrieve the tremendous error of guaranteeing the ‘independence and integrity’ of such an oppressor as soon as the Seraglio put itself in the wrong by not giving effect to the provisions of the Hatti Humayun of the Treaty of Paris. This duty arose probably very soon after the Treaty, but may be said (by an apologist) to have escaped notice, in so far as

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<sup>a</sup>The passage is in Mackintosh’s *Essay on the Partition of Poland*; “There is no political doctrine more false or more pernicious than that which represents vices in its internal government as an extenuation of unjust aggressions against a country, and a consolation to mankind for the destruction of its independence. As no government is without great faults, such a doctrine multiplies the grounds of war, gives an unbounded scope to ambition, and furnishes benevolent pretexts for every sort of rapine”

it merely appeared in reports and official documents. It was allowed to slip out of sight.

“But three years ago this duty *forced* itself upon our notice by the Herzegovinian revolt, and the English Ministry adopted a course of action by which they did not merely *neglect*, but *deliberately repudiated* it, taking ‘independence and integrity’ as the key of their policy, not in one case or another, but time after time. The Constantinopolitan conference was an exceptional incident, almost avowedly forced on the Government by the Bulgarian agitation—made abortive by parallel communications with Turkey—and at the close of which the Government (by the appointment of Layard and other matters) have come back to what I should call ‘their vomit,’ that is to say a course of obstructive special pleading, hiding the reconstruction of what is intolerable, under the phrase (which I see you adopt) ‘the faith of treaties.’ I say this because it is too evident to be denied that our present proceedings are such as to enable Turkey to prepare for a fresh struggle, that in case of such a struggle we have her as an ally, and that in case of such an alliance we must necessarily repay the Sultan and his Ministers by replacing them more or less in possession of the authority of which Russia threatens to deprive them.

“On the main point, I think the great difference between us is that I am thoroughly impressed by the belief that Turkey is incorrigible, while Russia is in process of improvement. These things—both of them—come to my mind with the clearness of the sun. And the suggestion of allowing Turkey a year for improvement appears to me like allowing a notoriously bankrupt debtor a month’s respite, during which he will remove his goods, and at the end of which the creditor (Russia) will have to recommence an expensive litigation which, when the dilatory plea was urged, was on the point of being brought to a hearing, sure to end in a success. I should be very sorry to stand godfather to the motives of Russian statesmen. I dare say they are as selfish as our own profess to be. But they have this advantage that their interests (so far as the liberation of the Turkish provinces go) coincide with the interests of humanity with which our own (alleged) interests conflict. And the result is that their present position, as viewed in future history, is on the road to grandeur—ours on the road to meanness.” (Letters of Lord Blachford, edited by Marindin, London, 1896, p. 389-391; see *ibid*, pp. 295; 441, for references to Granville and Newman’s estimate of Blachford.)

The violation of the laws of civilized warfare have led to several other interventions.<sup>64</sup> In 1835 the British Government intervened to prevent the Carlists from shooting their prisoners. (See Abdy's Kent, p. 244, note 2; British State Papers, Vol. 24, p. 396-416.) When the Nicaraguan Revolutionists under Zelaya bombarded Managua (1893) without notice, killing and injuring persons near the American legation, a strong protest was presented against this as an "act of barbarism," but when General Zelaya justified the act on the ground that Managua was a fortified place from which the enemy had... "fired on his forces who wishing to avert hostilities in reality remained in front of the city several hours without firing," and that they had detained a flag of truce, the American Minister accepted the explanation as a reasonable one. (Moore's Digest, Vol. VII, p. 181-2.)

The following incident which occurred in Italy may perhaps be considered typical of this class of interventions: "On the failure of Lord Minto's mediation, the Sicilians proceeded to decree the separation of the crown of Naples and Sicily, and proposed to the Duke of Genoa to become their king, which he, however, declined. The King of Naples, on the arrival of this news, despatched ships and troops against Messina and Palermo. The bombardment of these towns was attended by such acts of violence and cruelty on both sides that the English and French fleets interfered to procure an armistice. The period for cessation of hostilities expired, however, without any arrangement being arrived at. The fight was renewed; and the

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<sup>64</sup>We do not consider here interventions which vindicate the law of war between independent states, which have been considered in the preceding section (§ 7). Such interventions are, of course, ordinary instances of the vindication of the law of war, and are not matters of internal concern, as in the case of civil conflicts. In both classes of cases, however, humanitarian considerations enter as a motive of governmental action.

Sicilian revolt was finally put down by the middle of the year 1849.” (Extract from Ashley’s Lord Palmerston, Vol. I, p. 57; Cf. Stapleton: Intervention, p. 84-5.)

In these cases in which the insurrectionists are subjected to cruelties not permitted by the laws of war, there is, as we have seen, a just ground for humanitarian intervention, quite apart from any consideration of material injury done to neighboring states and their nationals, but when prolonged strife and anarchy seriously affect the latter, there arises still another justification for intervention by way of impeachment of the effective sovereignty of the titular government over the territory in question. (See discussion relative to the recognition of insurgents and belligerents, § 14.)

To conclude our consideration of humanitarian intervention to put an end to civil wars which are conducted in a manner to shock public opinion, we shall quote from John Stuart Mill’s article discussing intervention: “A case requiring consideration is that of a protracted civil war, in which the contending parties are so equally balanced that there is no probability of a speedy issue; or if there is, the victorious side cannot hope to keep down the vanquished but by severities repugnant to humanity, and injurious to the permanent welfare of the country. In this exceptional case it seems now to be an admitted doctrine, that the neighboring nations, or one powerful neighbor with the acquiescence of the rest, are warranted in demanding that the contest shall cease, and a reconciliation take place on equitable terms of compromise. Intervention of this description has been repeatedly practiced during the present generation, with such general approval, that its legitimacy may be considered to have passed into a maxim of what is called international law.”

(John Stuart Mill: *Dissertations and Discussions*, vol. III, p. 172. "A Few Words on Non-Intervention," reprinted from *Fraser's Magazine*, December, 1859, p. 773-4.)

§ 8(d). INJUSTICE<sup>65</sup>

Humanitarian intervention has frequently been employed for the protection of individuals against an abusive treatment, either the arbitrary confiscation of their property or the restraint of their personal liberty without justification in law. When the authorities of an independent state persist in administering the law with injustice and cruelty so excessive as to constitute an intolerable abuse and to shock the opinion of other states, it has led in certain instances to intervention on what we may properly designate as the ground of denial of justice.

The dangers and burdens which the repression of an occasional abuse would entail, as well as the remembrance of the fact that every state has given some causes of complaint, prevents intervention except in the case of persistent abuses or extraordinary crimes. To this latter category belongs the assassination of King Alexander and Queen Draga of Servia.

EXTRAORDINARY CRIMES

On the night of the 10th of June, 1903, a military uprising occurred at Belgrade. Officers made their way into the Konak and massacred King Alexander and Queen Draga, and hacked them with savage ferocity. According to the official report of the autopsy, the King received forty wounds and the Queen sixty-five.

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<sup>65</sup>"Injustice" is a somewhat vague term for which we might substitute "denial of justice," or "abusive treatment of individuals."

(See the *Temps* of June 17, 1903.) General Zinzar Markovitch, President of the Council, and General Pavlovitch, Minister of War, the two brothers of the Queen, Nicolas and Nicodème Lunjevitch, were also among the number of the victims.<sup>66</sup>

The horror caused by these events throughout Europe was profound, and the condemnation was unanimous. An ordinary conflict between the two opposing factions, the Obrenovitches and the Karageorgevitches, would not have astonished Europe. There were causes enough, as Europe well knew, to explain the revolution at Belgrade, but that was no justification for the scenes of carnage which took place on the night of the 10th of June. To have deposed King Alexander would have been reasonable, not so his assassination.<sup>67</sup>

The governments joined in the general reprobation of the murder itself. M. Delcassé, the Minister for Foreign Affairs, as soon as he was informed of what had occurred, called upon the Servian Minister to express to him the profound condolences of the French Government. (See *Journal des Débats* of June 13, 1903). A similar course was adopted by the King of Greece, his ministers, and the diplomatic corps ac-

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<sup>66</sup>This account of the assassination of King Alexander and Queen Draga is based upon that given by Professor Jules Basdevant in the *Revue generale de droit international*, vol. XI, 1904, p. 105-114. Professor Basdevant discusses the juridical principles involved, as well as the events. We have translated and quoted textually, for the most part, the portions which contains Professor Basdevant's statement of the facts, but have omitted his comments and discussion, for which the reader is referred to the original. As his source, M. Basdevant refers mainly to the *Journal des Debats* for June, 1903.

<sup>67</sup>M. Basdevant remarking that "It is not necessary to go back to the precedents of the Borgias' time," draws a comparison between this instance and that of Tsar Paul I, who also was assassinated by his officers. M. Basdevant might have added: "with the connivance of his successor."

credited to him. Court mourning was ordered in Russia, in Spain, and in Roumania. Several of the states that recognized the government of Peter I expressed their condemnation of the events of the night of June 10. In the House of Commons, the Prime Minister, Mr. Balfour, stigmatized the act as a crime which dishonored the capital of Serbia. In the House of Lords, Lord Lansdowne discussed the means by which the Government might seek to "express its indignation." In the Hungarian Chamber, similar sentiments were expressed. But in the Italian Senate, Admiral Morin made a declaration which may be considered to express the views of the different powers. "The government," said he, "shares the sentiments of horror which this tragic occurrence has aroused in Italy as in all parts of the civilized world. Nevertheless, even though this feeling dominates all other impressions in the presence of this terrible tragedy, the Government must remember that the events which took place at Belgrade, notwithstanding their atrocity, relate to internal affairs." It was not for other states to take notice of them. Similar views were expressed by Count Goluchowski before the Budget Commission of the Austrian Delegation. (See *Temps*, January 13). This was also the opinion of the powers. But if the other states were not called upon to take action to secure the adequate punishment of the culprits, should they hold aloof from the new government established in Serbia? This was a question which soon arose.

A provisional government was soon formed under the presidency of M. Avokoumovitch, and it undertook to maintain order until the election of a new sovereign by the nation. In a communication to the press, the provisional government expressed the conviction that by so doing it would secure "for the new



order of things the sympathy of the European powers." But the latter refused to recognize the provisional government and to enter into official relations with it. They directed their representatives at Belgrade to limit their action to the protection of their nationals. This course could be adopted without inconvenience, since it was not expected to be prolonged beyond a brief period, and it would give satisfaction to public opinion, which accused the provisional government of complicity in the murders, because of the fact that it was established so soon after the murder, and because it contained among its members some of those who had participated in the conspiracy.

The situation was changed after the Skoupchtina had chosen Peter Karageorgevitch king by unanimous vote.<sup>68</sup>

The powers then decided to recognize him, and they did so without delay, but not all of them with an equal grace. The Tsar and the Emperor of Austria led the way and congratulated Peter I upon his election. The King of Italy and the Prince of Montenegro were also among the first to express their good wishes, as was to be expected on account of family ties. The other powers quickly followed the example of the two empires most directly interested in Balkan affairs. They acknowledged the receipt of the announcement of King Peter's accession to the throne, and addressed their felicitations to him. Great Britain was somewhat slower than the others to recognize the new King. Edward VII delayed his reply for five days.

The different views of the powers were made evident by the instructions which they gave to their diplomatic

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<sup>68</sup>Professor Basdevant, discussing the recognition of Peter I of Servia, states that to refuse to recognize the complete competency of a state to choose its chief would amount to an intervention.



representatives at Belgrade. The full powers of these diplomats had come to an end with the death of Alexander I, the sovereign to whom they had been accredited. This was explained by Mr. Balfour in the House of Commons, and Lord Lansdowne in the House of Lords. It had been suggested in the press, and the English statesmen had considered the recalling of their agents from Belgrade to indicate their condemnation, but this was not done, and the members of the diplomatic mission were allowed to remain for the purpose of reporting upon events, and protecting national interests.

After the election of Peter I, and before his entry into Belgrade, the Russian Minister renewed official relations by a visit to the Servian Minister for Foreign Affairs, and he was present, with the Austrian Minister, when the king arrived to take the oath of office. The representatives of the other powers did not take part in this ceremony. They had received orders from their governments not to appear. Several of them even left Belgrade. Great Britain, in this instance, also went further than the others in expressing disapprobation, since her minister was the first to leave.

In the instructions which the powers had given to their ministers they committed no impropriety. The diplomatic agents upon the death of the king had lost their official character, and their absence from this ceremony was natural. But even though they kept within the limits of the law, the effect of this absence was to manifest the sentiments of reprobation which the powers entertained because of the crime of June 10. Nevertheless, as Peter I was the recognized King of Servia they did not delay in renewing the letters of credence of their representatives at Belgrade. Certain of the powers, although they did not consider that they should concern themselves with what was a question of

internal affairs, felt, nevertheless, that they ought to express their opinions and give their advice to the Servian Government. Emperor Francis Joseph, in his telegram in reply to the announcement of the election of Peter I, wished that he might "happily accomplish the noble mission which was confided to him by helping his country to recover the good opinion which she had lost in the eyes of the civilized world in consequence of the odious and universally abhorred crime recently committed." The Russian Government, in its official organ, *Messenger du gouvernement*, published a communication in which the Government of the Tsar demanded the punishment of the assassins, and Edward VII, in his telegram of June 30th, expressed to Peter I his hope to see reëstablished the reputation of his country upon which recent events had left so regrettable a stain.

The counsel of the powers was without effect. Notwithstanding the good intentions manifested by King Peter upon his election, the regicides were not prosecuted because a decision of the Skoupchtina during the interregnum had covered them by an amnesty. This fact and the favors shown to the officers who had participated in the assassination led to a new military plot which, however, did not succeed. In several European capitals, the Servian officers were ostracized. At St. Petersburg the officers who were sent to escort the returning children of King Peter were not received, on the ground that they had been implicated in the assassination of the former sovereigns. A rumor even was circulated that when King Peter expressed a desire to visit the German Court, Emperor William had replied that he would refuse to receive the patron of regicide officers. Finally, the entire diplomatic corps left Belgrade to avoid coming in contact with the regicide officers who were attached to the person of the

King during the reception on New Year's day. To lessen the effect of this action, the King thought best to absent himself also from his capital on the pretext that he was celebrating at Tapoli the centenary of the war of deliverance. The *Chargés d'Affaires* at Belgrade merely wrote their names in the visitor's book at the palace.

Some months after the occurrence of these events, the American Secretary of Legation at Athens, in a dispatch of April 7, 1904, reported to Secretary Hay: "...the transfer of several of the officers concerned in the murder of the late King and Queen." The dispatch concludes as follows: "The result of this measure has been that the chief objection of the powers against renewing diplomatic relations with Servia has been removed, and Russia immediately announced the appointment of M. Goubastoff, at present minister to the Vatican, to succeed M. Tcharykoff as minister at Belgrade. Italy has also informed King Peter that the Italian minister will immediately ask for an official reception, and it is expected that the other countries will soon follow the example of Italy and Russia." (*Foreign Relations*, 1904, p. 800.)

Although an occasional instance of intervention in the case of an extraordinary crime or transgression may properly be classed as humanitarian and justified in law, ordinary intervention to prevent injustice is in practice restricted to instances in which a government has been guilty of persistent misconduct or a prolonged neglect to remedy unjust conditions within its jurisdiction.

A typical instance of action to remedy persistent injustice was the collective intervention of the powers in Morocco in 1909 because of the employment of torture to obtain evidence from witnesses.

## PERSISTENTLY ABUSIVE TREATMENT

From Professor Antoine Rougier, we borrow the following interesting account of the collective intervention of the powers in Morocco:

“During the summer of 1909, Moulay-Hafid undertook a successful campaign against the Roghui, or claimant to the throne of Morocco, Bou-Hamara. The Roghui and a number of his adherents fell into the Sultan's hands. He declared his prisoners guilty of rebellion, and punished them with the utmost severity, so as to impress the native population. The most usual punishment passed upon the rebels was to cut off their hands and feet. The punishments often involved the most refined torture, terminating in a slow death. The traditional torture with salt which had been given up in Morocco many years ago was reintroduced. As for the Roghui, while waiting for his sentence, he had been shut up in an iron cage like a wild beast and displayed to the gibes of the populace.

“These acts, reported by the press, aroused the sympathy of Europe. A certain number of the members of the French Parliament addressed themselves to the Minister for Foreign Affairs and asked that France should intervene in Morocco to put an end to these scenes of cruelty, and to save the Roghui from the punishment which apparently was reserved for him. The minister willingly consented and gave instructions to this effect to the French Minister at Tangiers, M. Regnault. Similar opinions were expressed in most of the countries of Europe. The Spanish Minister for Foreign Affairs, in particular, gave corresponding instructions to his representative to the Sherifian Government. (See *Journal des Débats*, Aug. 29, 1909.)

“As early as August 30, 1909, two consuls at Fez, those of France and England, M. Gaillard and Mr.

MacLead (see *Matin*, September 4, 1909) had addressed remarks to the Sultan in a purely friendly and private capacity, and in accordance with the informal and unofficial instructions of their respective governments. When Moulay-Hafid seemed little disposed to give heed to them, the members of the diplomatic corps at Tangiers drafted a collective letter in which they demanded that the Sultan abandon torture in Morocco, namely all bodily punishment producing mutilations or slow death, and that in the future he observe 'the laws of humanity.' This letter was carried by a special messenger and it was delivered to the Sultan by the Consular Corps at Fez, presided over by the dean of the corps, and when it was delivered it was accompanied by verbal representations." (See *Journal des Débats* of September 4, 10, 11, and 15, 1909.)

"This second proceeding [démarche], undertaken by the representatives of the European powers, undoubtedly amounted to a diplomatic intervention in Sherifian affairs [administration]. The result in any event was unfortunate. The Sultan gave to the assembled consuls all the assurances for which they had asked and he solemnly promised to observe in the future the laws of humanity. Soon after their departure he ordered the Roghui, his enemy, to be immediately put to death, and addressed a long memorandum to a paper in Tangiers (*La Dépêche marocaine* of Sept. 10, 1909) to justify the measures of repression employed against the adherents of Bou-Hamara."<sup>69</sup> The Minister for Foreign Affairs, in making a report of this incident to the Council of the Ministers, could do no more than

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<sup>69</sup>This note is discussed in the *Matin* of Sept. 10, 1909, and in the *Petit Parisien* of Oct. 19, 1909.

Upon the basis of the facts as given above, Rougier enters upon an interesting discussion of the legality of humanitarian intervention, of which he says, this is an instance.

recognize the failure of the European intervention.<sup>70</sup> (Translated from A. Rougier in *Revue générale de droit international public*, vol. 17 (1910), p. 98-9.)

From the reminiscences of an experienced diplomat, we draw another illustration: Sir Frederick St. John, British Minister to Central America in the early eighties, convinced himself after a careful examination that the then President of Guatemala, Barrios, was a bloodthirsty tyrant who did not hesitate to make away with his victims and to subject them to the most revolting cruelties. The British Minister was deeply stirred by what he learned, and convinced that there was justification for a report to the Foreign Office of what was going on in Guatemala. "When my report reached home," writes Sir Frederick, "it was printed and communicated to several Continental Governments, with the object of concerting as to what steps should be taken in common; but, with one exception, none of my foreign colleagues corroborated my statements; notwithstanding that they had been the principal source whence I derived my information, which, from a much longer residence than mine, and a wider and more intimate acquaintance with the natives, they were qualified to give." One of the diplomatic representatives was sufficiently disloyal to communicate Sir Frederick's report to President Barrios who behaved with such insolence to the British Minister that his government ordered him by telegraph, "to leave the country at once, and come home." "The reason of this repudiation," remarks Sir Frederick, "was obvious. None of

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<sup>70</sup>In his article on the Theory of Humanitarian Intervention, published in the same *Revue* (ibid, p. 477), M. Rougier refers to this incident and remarks that in the month of September, 1909, the powers who had signed the Act of Algéiras, in a diplomatic note addressed to the Sultan of Morocco, based their action squarely on the right [la théorie] of humanitarian intervention.

my foreign colleagues were in the regular diplomatic service, and must have felt that, if recalled by their Governments, they would receive no appointment elsewhere.

“My own position was different; but, on the other hand, I exposed myself to the suspicion that I had been actuated by a desire to obtain another post. I can only affirm that nothing was farther from my thoughts. I had just set up a very costly establishment on my marriage, and it was my interest to remain for some time at my post and recover from my excessive outlay.”

When the British Minister left Guatemala, the American Minister, Mr. Hall, accompanied him for a considerable distance, evidently for the purpose of shielding him against outrages from the local authorities on account of the report which he had made to his government.

“On arriving in London,” writes Sir Frederick, “I reported myself at the Foreign Office, where it at once became evident to me that my account of what was going on in Guatemala met with little credence; and I was advised by an ‘Assistant Under-Secretary of State’ ‘to go to the country and rest.’ He afterwards informed a relative of mine that I was suffering from ‘President on the brain.’

“I pondered over this official non-medical opinion, and came to the conclusion that my foreign colleagues at Guatemala were wise in their generation in withholding from their governments the information I had, in a thoughtless moment, given to mine, and of which they were as cognizant as myself.” (Sir Frederick St. John: *Reminiscence of a Retired Diplomat*, p. 231-6.)



## CONSTITUTIONALISM

Intervention to prevent injustice cannot legally be made a ground for interfering in the internal political affairs of an independent state to establish representative institutions or any other form of constitution or government. However morally justifiable interference for such a purpose may be, it remains an act of policy and must be defended as such. But an interfering government is ever prone to consider and to assert that its interference in favor of constitutionalism or legitimacy is an intervention justifiable according to the principles of international law.

In recent decades, when absolutist governments have considered themselves fortunate to preserve their possessions, the liberal states, such as England, and more recently the United States, have interfered in favor of representative institutions.<sup>70a</sup>

When Secretary Knox notified the Nicaraguan Chargé of the refusal of the United States to continue the recognition of Zelaya's Government, among the reasons given in the note of December 1, 1909 (Foreign Relations, 1909, p. 455; Cf. Moore's Principles of Diplomacy, p. 266), was: "It is equally a matter of common knowledge that under the régime of President

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<sup>70a</sup>Stapleton criticizing Palmerston says: "In speaking of our forcible interference in the affairs of Spain and Portugal in 1834, he [Palmerston] observed, 'We looked upon the question, not as a simple choice between one Sovereign and another, but (as it was in reality) absolute government on the one hand and constitutional government on the other;' and then having argued to prove that constitutional government in the Peninsula was advantageous to British interests, he claimed great merit for having been *above all 'narrow-minded prejudices'* in determining 'on an act of forcible interference for the purpose of giving those countries the blessing of constitutional government.' " (A. G. Stapleton: Intervention, p. 109-110.)

Zelaya republican institutions have ceased in Nicaragua to exist except in name.” It is only fair to state that this was but a part of the description of intolerable conditions which were the real and a sufficient justification for the intervention of the United States. President Wilson seems to have gone much further, and to have made interference to preserve constitutionalism a basic principle of his administration. Upon this ground, he refused to recognize General Huerta when he was *de facto* in control of Mexico City and a great part of the country.<sup>71</sup> (Cf. J. B. Moore, Princi-

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<sup>71</sup>The recently published diplomatic correspondence relative to Mexican affairs in 1913 (Foreign Relations, 1913, p. 692f.) discloses a succession of acts of interference by the American Government in the internal affairs of Mexico, made necessary by the peculiar relations between the two states. But the action of President Wilson in regard to outlawing the Huerta Government was unusually drastic. By Secretary Bryan, the following circular instruction, dated November 7, 1913, was sent to certain of the American diplomatic representatives: “While the President feels that he cannot yet announce in detail his policy with regard to Mexico, nevertheless he believes that he ought, in advance thereof, to make known to the government to which you are accredited his clear judgment that it is his immediate duty to require Huerta’s retirement from the Mexican Government, and that the Government of the United States must now proceed to employ such means as may be necessary to secure this result; that, furthermore, the Government of the United States will not regard as binding upon the people of Mexico anything done by Huerta since his assumption of dictatorial powers, nor anything that may be done by the fraudulent Legislature which he is about to convoke. The President hopes that the government to which you are accredited will see fit to use its influence to impress upon Huerta the wisdom of retiring in the interest of peace and constitutional government.

“You will convey the foregoing to the Minister for Foreign Affairs.” (Foreign Relations, 1913, p. 856.)

The Italian Minister for Foreign Affairs considered that “...Huerta was no worse than the others and the only person in sight apparently strong enough to restore order of some kind.” (Ibid, p. 857.)

ples of American Diplomacy, p. 213-238. See also correspondence, Mexico, in Foreign Relations, 1913). More recently the Tinoco Government in Costa Rica was regarded as beyond the pale, apparently because it had acquired control through force and not in accordance with constitutional provisions and election.<sup>72</sup>

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Sir Edward Grey was informed by Ambassador Page that "he might consider Huerta's elimination certain, the question now being: Shall he be eliminated with or without the moral support of the British Government? Sir Edward's last words were 'It is a very grim situation.' " (Ibid, p. 857.) But in a later interview, November 11, (ibid, p. 860), Sir Edward Grey promised to instruct Sir Lionel Carden, the British Minister, that if Huerta asked for British aid or showed by act that he expected it, Carden should inform him that he should not have it, but "Sir Edward stopped short at saying that without such act or request from Huerta he would instruct Carden to take the initiative in approaching him." (Ibid, p. 860.)

The Government of Panama replied, that "as the efforts of President Wilson to restore constitutional government in Mexico is generous and noble, the Panaman representative has been instructed to say that Panama sympathizes with those efforts." (Ibid, p. 861.) Some other Latin American countries made a favorable response.

<sup>72</sup>The New York *World* of August 3, 1920, printed the following report from Washington: "The United States has extended formal recognition to the present Government of Costa Rica, it was announced to-day by the State Department. On Jan. 27, 1917, Federico Tinoco overthrew the constitutional Government of Costa Rica, forcing President Gonzalez to leave the country. The United States refused to recognize the Tinoco Government on the ground that it did not represent the will of the people. In August, 1919, Tinoco left Costa Rica, and a month later his government fell. He got out ahead of the crash.

"After the constitutional succession was reestablished Julio Acosta was chosen by an overwhelming majority and was inaugurated as constitutional President on May 8 of this year. In making the announcement Secretary of State Colby said:

" 'President Wilson's policy has been completely vindicated and Costa Rica is now organized in accordance with the principles laid down by the Government of the United States when recognition was refused to the Tinoco régime.' "

Sir Henry Maine, in his *Lectures on International Law* (p. 63), has remarked upon the tendency to interfere in constitutional affairs:

“Before, however, the European peace finally broke up, the current had turned in the other direction; and Great Britain, whose foreign affairs were now directed by Lord Palmerston, employed its influence to assist states which desired to obtain Constitutions. In addition to the desire for popular government the spirit of nationality had now come into play; and the ultimate result was the intervention of Napoleon III in Italy and the destruction of the Italian despotisms. Therefore all the Powers in Europe, during the peace, did in turn act upon principles from which the inference might be drawn that they denied the right of a state under certain circumstances to adopt what political Constitution it pleases; nevertheless,” he adds, “this rule of law in the long run prevailed.”

From Professor Lingelbach's discussion of the principles of intervention, we quote the following passage: “In the Quadruple Treaty of 1834<sup>78</sup> the two countries [Great Britain and France] guaranteed their aid against Don Carlos and Don Miguel, the representatives of the reactionary and despotic tendencies in Spain and Portugal, affording a striking illustration of how these two states, in their eagerness to support constitutionalism, went almost as far in interfering in the internal affairs of other states as did Metternich himself. The claim to the right of intervention in support of constitutionalism must rest on precisely the same principle as do the acts of the Holy Alliance.” (W. E. Lingelbach: *The Doctrine and Practice of Intervention in Europe*, *Annals of the American Academy of Political and Social Science*, 1900, vol. XVI, p. 16.)

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<sup>78</sup>Professor Lingelbach refers to Hertslet, vol. II, No. 171.

What is politics to-day may become the law of to-morrow, but as yet there is under international law no right of intervention to foster or to impose representative institutions.

#### FAVORED TREATMENT FOR ALIENS

In many instances the great and highly civilized states have interposed to secure for their nationals a better treatment than certain backward states were according their own nationals. To justify this course, the theory has been advanced that the state which admits aliens may be assumed to promise and guarantee them those rights which are recognized as indispensable for all human beings in civilized states.

Sir Roundell Palmer (later Lord Selborne) ably stated this view in a speech on the "Greek Massacre," which he delivered in the House of Commons May 20, 1870: "With regard to all Englishmen travelling in a friendly State pretending to civilization, we have a right to look for the observance and the enforcement by that State of the principle which is briefly stated by Chancellor Kent, in his 'Commentaries on Public Law,' where he says 'that when foreigners are admitted into a State upon free and liberal terms, the public faith is pledged for their protection.' That does not, of course, mean that an exceptional protection, greater than that which well-constituted governments ordinarily extend, and ought to extend to their own citizens, is pledged to the citizens of foreign States; but it does mean that those foreigners who come within their limits have the public faith pledged to them for the protection of a *bonâ fide* settled government, capable of repressing violence, outrage, and crime, in that manner and in that degree in which human governments in civilized countries ordinarily are capable of discharg-

ing those functions. And it is manifest that if foreigners were not entitled to look for that protection, all possibility of respecting the independent territorial sovereignty of foreign States would be at an end, and every nation would be compelled to apply its own power for the protection of its own citizens in foreign countries." (Hansard, vol. 201, p. 1123, quoted by Creasy: First Platform of International Law, p. 307 and 336.)

It seems hardly fair however for the advocates of the theory of perfect rights and absolute independence to destroy the child of their imagination by creating by implication and construction an undertaking on the part of an independent state to guarantee to aliens advantages which it is unwilling or unable to accord its own citizens. In refutation of such a theory and in defense of the right of sovereignty, it would be a sufficient answer to quote from Secretary of State Marcy's instructions of April 6, 1855, to the American representative at Vienna: "The system of proceeding in criminal cases in the Austrian government, has, undoubtedly, as is the case in most other absolute countries, many harsh features and is deficient in many safeguards which our laws provide for the security of the accused; but it is not within the competency of one independent power to reform the jurisdiction of others, nor has it the right to regard as an injury the application of the judicial system and established modes of proceedings in foreign countries to its citizens when fairly brought under their operation. All we can ask of Austria, and this we can demand as a right, is that, in her proceedings against American citizens prosecuted for offences committed within her jurisdiction, she should give them the full and fair benefit of her system, such as it is, and deal with them as she does with her own subjects or those of other foreign powers. She cannot be asked to modify her mode of proceed-

ings to suit our views, or to extend to our citizens all the advantages which her subjects would have under our better and more humane system of criminal jurisprudence.” In the course of these same instructions, Marcy said: “That feature in the criminal law of Austria which interdicts to the accused under arrest intercourse and free communication with his friends is certainly revolting to our notions of justice and humane treatment, but it is not peculiar to that government. Several other countries in Europe have the same provision in their system of criminal law...I am not attempting to justify the Austrian criminal code,...; but condemnable as it may be, we have not the right to alter or suspend it, nor can we convert the fair application of it to one of our citizens when brought within its jurisdiction into an international offence.”<sup>74</sup> (Manuscript instruction given in Moore’s Digest, Vol. VI, p. 275.)

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<sup>74</sup>The following extract from Daniel Webster’s report to President Fillmore on the Thrasher Case expressed the same opinion, although that case, relating to the right of a citizen domiciled abroad to the interposition of his government, was not directly in point. The Secretary of State said:

“Our citizens who resort to countries where the trial by jury is not known, and who may there be charged with crime, frequently imagine, when the laws of those countries are administered in the forms customary therein, that they are deprived of rights to which they are entitled, and therefore may expect the interference [interposition] of their own Government. But it must be remembered, in all such cases, that they have of their own free will elected a residence out of their native land, and preferred to live elsewhere, and under another government, and in a country in which different laws prevail.

“They have chosen to settle themselves in a country where jury trials are not known; where representative government does not exist; where the privilege of the writ of *habeas corpus* is unheard of, and where judicial proceedings in criminal cases are brief and summary. Having made this election they must necessarily abide its consequences. No man can carry the



Without contradicting Marcy's correct statement of the legal principle under international law, Elihu Root is the authority for a statement of the right of aliens to a favored treatment in the exceptional circumstances which we are considering. In his Presidential Address before the tenth meeting of the American Society of International Law, in the course of his discussion of "The Basis of Protection to Citizens Residing Abroad," Mr. Root said:

"There is a standard of justice, very simple, very fundamental, and of such general acceptance by all civilized countries as to form a part of the international law of the world. The condition upon which any country is entitled to measure the justice due from it to an alien by the justice which it accords its own citizens is that its system of law and administration shall conform to this general standard. If any country's system of law and administration does not conform to that standard, although the people of the country may be content or compelled to live under it, no other country can be compelled to accept it as furnishing a satisfactory measure of treatment to its citizens. In the famous *Don Pacifico* case, Lord Palmerston said, in the House of Commons:

" 'If our subjects abroad have complaints against individuals or against the government of a foreign country, if the courts of law of that country can afford them redress, then, no doubt, to those courts of justice the British subject ought in the first instance to apply; and it is only on a denial of justice, or upon decisions manifestly unjust, that the British Government should be called upon to in-

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aegis of his national American liberty into a foreign country, and expect to hold it up for his exemption from the dominion and authority of the laws and the sovereign power of that country, unless he be authorized to do so by virtue of treaty stipulations.' " (Moore's Digest, vol. II, p. 88.)

terfere. But there may be cases in which no confidence can be placed in the tribunals, those tribunals being, from their composition and nature, not of a character to inspire any hope of obtaining justice from them. It has been said: "We do not apply this rule to countries whose governments are arbitrary or despotic, because there the tribunals are under the control of the government, and justice cannot be had; and, moreover, it is not meant to be applied to nominally constitutional governments, where the tribunals are corrupt."

" 'I say, then, that our doctrine is, that, in the first instance, redress should be sought from the law courts of the country; but that in cases where redress cannot be so had—and those cases are many—to confine a British subject to that remedy only, would be to deprive him of the protection which he is entitled to receive.....

" 'We shall be told, perhaps, as we have already been told, that if the people of the country are liable to have heavy stones placed upon their breasts, and police officers to dance upon them; if they are liable to have their heads tied to their knees, and to be left for hours in that state; or to be swung like a pendulum, and to be bastinadoed as they swing, foreigners have no right to be better treated than the natives and have no business to complain if the same things are practiced upon them. We may be told this, but that is not my opinion, nor do I believe it is the opinion of any reasonable man.'

" 'Nations to which such observations apply must be content to stand in an intermediate position between those incapable of maintaining order, and those which conform fully to the international standard.'"<sup>75</sup> (Pro-

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<sup>75</sup>" 'It is very desirable,' said Mr. Root, "that people who go into other countries shall realize that they are not entitled to have the laws and police regulations and methods of judicial procedure and customs of business made over to suit them, or to have any other or different treatment than that which is accorded to the citizens of the country into which they have

ceedings of the American Society of International Law, 1910, p. 21-2.)

If we accept Mr. Root's statement—and how can we do otherwise—the difficulty disappears. The consequence of this rule is that the law of nations is recognized supreme, and requires every state that would preserve its independence to remove the grounds which, under the supreme law of nations, would justify an intervention.<sup>76</sup>

If space would permit, we might amplify this discussion, but this is unnecessary if the reader is convinced that: In accordance with the principles of international law, every state is required to police its own territory in such a manner as to secure for all its inhabitants, nationals as well as aliens, a reasonable protection and the enjoyment of a minimum of rights, recognized by that law as absolutely indispensable for

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gone; so long as the government of that country maintains, according to its own ideas and for the benefit of its own citizens, a system of law and administration which does not violate the common standard of justice that is a part of international law; and so long as, in conformity with that standard, the same rights, the same protection, and the same means of redress for wrong are given to them as are given to the citizens of the country where they are." (See Elihu Root, in Proceedings of the American Society of International Law, 1910, p. 26.)

<sup>76</sup>The defenders of the theory of perfect rights and absolute independence may avoid this horn of the dilemma by recognizing that the states which do not observe this requirement are in a separate class of partially sovereign states, but if this theory should be adopted, it would then be necessary to make constant modifications in the list of states completely independent, for any state against which a justifiable intervention upon this ground took place would have to be dropped. This second horn of the dilemma is no less painful than the first.

all civilized human beings." The failure to meet this obligation is a delinquency which justifies interposition

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<sup>77</sup>Borchard: *Diplomatic Protection*, p. 13-14; 14 notes 1, and 2.

Discussing the justification for the protection of nationals in other states, W. E. Hall (*Foreign Jurisdiction of the British Crown*, § 5) declares that this interposition, although he does not use this term, "...gives the means of guarding them against the effect of unreasonable laws, of laws totally out of harmony with the nature or decree of civilization by which a foreign power affects to be characterized, and finally of an administration of the laws bad beyond a certain point. When in these directions a state grossly fails in its duties; when it is either incapable of ruling, or rules with patent injustice, the right of protection emerges in the form of diplomatic remonstrance, and in extreme cases of ulterior measures."

Secretary Bayard, in his instruction of August 24, 1886, to the American Minister to Peru, relative to the killing by government troops of an American non-combatant, Owen Young, in violation of the law of war, wrote: "It cannot be admitted that in every case the rights of a foreigner in that country [Peru] may be measured by the extent of the protection to person and property which a citizen might obtain. In times of civil conflict...it not infrequently happens that citizens of a country are compelled to endure injuries which would afford ample basis for international intervention [interposition], if they were inflicted on a foreigner." (Moore's *Digest*, Vol. VI, p. 252; cf. p. 759.) Without the qualification relative to the extreme case of a civil war, this would be a good statement of the rule of law as exemplified by practice.

Professor Eugene Wambaugh, in a carefully prepared address on "The Place of Denial of Justice in the Matter of Protection" (*Proceedings of the American Society of International Law*, 1910, pp. 126-137) gives the rules which he considers to constitute good practice, the second of which reads: "The alien is entitled to no more enlightened procedure than is accorded to the citizen, unless that procedure is so cruel or unjust as to lose the right to be termed judicial," which amounts to saying that the alien does have a right to a favored treatment when the procedure is so cruel or unjust that it can no longer be rightfully termed judicial.

We have seen above (p. 80-81) how the French Government insisted that French Jews in Switzerland should be exempted from the disabilities and discriminations then imposed by Switzerland upon her own Jews.

of the alien's government to secure redress. The natives of the delinquent state, when they are subjected to abuse, are expected to revolt and establish a government able to maintain them in their rights, and it is only exceptionally that other states may be expected to intervene to help them to obtain their rights.

Interposition to secure a privileged treatment or status for aliens brings out in bold relief the obligation of every state to accord a minimum of rights to all those under its jurisdiction, and when the failure to fulfil this obligation in so far as concerns its own nationals causes a misery which shocks public opinion in neighboring states, it leads to, and affords a justification for humanitarian intervention.

Unless this obligation we have been considering were a part of the law of nations, it would not be logical for another state to demand for its own citizens a better treatment than could be secured by the natives. There is something so patently unjust about the claim to exact for aliens a better treatment than for those who possess the territory that some writers have wished to apply the principle of national treatment to all foreigners who enter the territory voluntarily, but they fail to perceive that the state which sinks below a certain standard is only allowed to maintain its precarious independence upon the condition that at least it live up to its international obligations to the degree of protecting aliens in the enjoyment of a minimum of security to their lives and property. The great states are constantly exerting pressure to maintain their nationals in the enjoyment of this minimum, but they are sometimes restrained from action by their own political embarrassment or a belief that the government of the state in question is unable to secure for their nationals the minimum they are entitled to demand. In this latter event, there arises a just ground

for intervention by way of self-help to secure the protection which is due, and this serious step usually leads to annexation or the extension of some form of supervision over the backward state.

Interposition to secure a favored treatment for aliens has shown how clearly international law recognizes the obligation of every government to administer justice in so far as is reasonably possible under the circumstances. Those states that are not able to guarantee the irreducible minimum to their own citizens are required to do so in the case of aliens or else to confess that they are not entitled to rank as independent states fulfilling the obligations of international law.

#### TREATMENT OF ABORIGINES

The concurrent and coöperative representations of Great Britain and the United States to the Belgian Government (1906-09) in behalf of the aborigines of the Kongo constitute one of the most remarkable instances of humanitarian intervention.

On December 2, 1905, Mr. Henry Lane Wilson, the American Minister at Brussels, transmitted to the Secretary of State, then the Honorable Elihu Root, a copy of "*La Verité sur le Kongo*," "containing," as Mr. Wilson said "...a resumé in the English language of the report of the special commission to investigate the administration of King Leopold in the Kongo." "The report," states Mr. Wilson, "seems to be made in a spirit of perfect fairness, and the findings of the commission will doubtless be accepted as unprejudiced and just conclusions."

A mere reading of this report without any knowledge of the facts justifies the favorable impression which it had created upon the American Minister. It recognized certain inevitable abuses which must occur

in any organization such as that of the Kongo. It justified the necessity for enforced labor to compel the payment of taxes, and it congratulated the administration on its humanitarian action in refraining from supplying alcohol to the natives who "would have overcome their innate laziness in order to procure it." (Foreign Relations, 1905, p. 88.)

Reference was made to the favorable opinion of "Messrs. Stapleton and Millman, two missionaries settled in the Falls district," who declared that "they were perfectly satisfied with the moral and material condition of the country." The prevalence of certain barbaric customs, such as the mutilation of the dead, was remarked upon, but the administration of the Kongo was praised for its efforts to eradicate these abuses, and for its success in repressing the ravages of the Arab slave dealers. The report stated that "the obligation to work, if not excessive, and if applied in a paternal and equitable way, violence being always omitted, will be an efficient manner to civilize and transform the native population." (Ibid, p. 92.)

On February 20, 1906, Secretary Root, in reply to a letter which he had received from Mr. Denby relative to the treatment of the natives of the Kongo, declared: "...the United States has no treaty right of intervention. We could not rightfully summon or participate in any international conference looking to intervention, adjudication, or enforcement of a general accord by other African powers against the Kongo State." (Foreign Relations, 1906, Part I, p. 88-9.)

The Belgian Minister at Washington cabled his Government a summary of Mr. Root's letter, and shortly thereafter, the American Minister at Brussels notified his Government of the satisfaction which the letter above referred to had afforded the Belgian Government. In his report, Mr. Wilson said: "The full text



has been printed by almost every respectable newspaper in Belgium, and the editorial comments have been uniformly expressive of high appreciation and approval of the position assumed by Mr. Root.

“I inclose a copy and translation of an editorial excerpt from *Indépendance Belge*, the leading daily paper of Brussels, and also a translation of a part of an article by Kurt Wolff in the German magazine *Handel und Industrie*, bearing upon the subject treated by Mr. Root in his letter to Mr. Denby.

“The Kongo Government are greatly pleased with the attitude of the United States, as outlined by Mr. Root, as it has recently had to meet attacks not only from foreign sources, but also from Belgium. It has issued a pamphlet in English containing Mr. Root’s letter, and has had the same translated into French and German.” (Foreign Relations, 1906, Part I, p. 94.)

A few months after this, on April 12, 1906, Senator Morgan presented an appeal to Congress from the Kongo Reform Association on behalf of the natives of the Kongo, which was printed and distributed as a Senate Document (No. 316, 29th Congress, 1st Session). To this were annexed a number of statements from missionaries in the Kongo State and affidavits purporting to reproduce the evidence which certain witnesses had already given before the Commission of Inquiry appointed by King Leopold, which evidence, notwithstanding the ex parte character of the Commission the Kongo Government had “failed to make accessible to the public and to other governments” (Ibid, p. 2). The evidence submitted was of a nature to show that the aborigines of the Kongo engaged in collecting rubber had been subjected to a barbarous treatment in order to terrorize them into bringing in the required

supplies of rubber.<sup>78</sup> The appeal of the Kongo Reform Association, signed by a distinguished and philanthropic group of citizens,<sup>79</sup> urged the necessity of international action. The report declared:

“With reference to the condition thus disclosed we would respectfully urge that international action is a necessity. The Kongo Government evidently is disqualified for dealing satisfactorily with the existing situation, in view of its alleged responsibility for the wrongs reported, and of its acknowledged commitment to maintenance of the system of territorial monopolization to which it is declared these wrongs are directly traceable.” (Senate Document 316, p. 2.)

While it was admitted that the United States did not “share the supervisory powers belonging to the signatories of the General Act of the Berlin conference,” it was, the appeal declared, “. . .equally clear. . .” that the attitude taken by the United States permitted it with perfect propriety to “. . .suggest to the powers the importance of meeting again for consideration of the grave reports now current. . .” As regards the powers and obligations of the United States under the Brussels act, the Committee pointed out that the Brussels conference “represented a joint coöperative effort for relief of conditions in the Kongo territory. While dealing primarily with measures for ‘repression of the African slave trade,’ it was animated by a purpose of

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<sup>78</sup>See Senate Document No. 316, p. 6-30; also report of the American Consul-General at Boma, Senate Document No. 147, 61st Congress, 1st Session, p. 35-40.

<sup>79</sup>The names of the signers who honored their country and themselves by their appeal were: G. Stanley Hall, Samuel B. Capen, Benjamin F. Trueblood, John R. Gow, Wm. E. Huntington, Herbert S. Johnson, Frederick B. Allen, Edward H. Clement, Edward M. Hartwell, Thomas Lacey, Charles F. Dole, Edward W. Capen, Edwin D. Mead, Everett D. Burr, Charles Fleischer, Thomas S. Barbour; Hugh P. McCormick (Corresponding Secretary).

larger scope disclosed by the declaration of its aim of 'effectively protecting the original population of Africa and securing for this vast continent the benefits of peace and civilization.' '' (Ibid, p. 3.) All the powers were alike committed, in the opinion of the Committee, "to the coöperative purpose represented by the conference," (Ibid, p. 3) and amongst them the United States since it was a signatory of the General Act of Brussels. The appeal of the Committee continues:

"We recall that the President of the United States, in making publication of the General Act of Brussels, states that it was duly ratified, together with the protocol of January 2, by the United States Government, and adds that the Act is "made public to the end that the same, and every article and clause thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

"We would urge that under the General Act of Brussels our government is entitled to suggest to the powers the propriety and importance of instituting an inquiry to determine whether the government of the Kongo State, by its permission of conditions reproducing the worst horrors of the slave trade, is not in violation of the spirit, and of certain specific engagements, of its agreement under the Act of Brussels; and that it may inquire further whether the system of monopolization of territory and products maintained and enforced by the Kongo Government is not itself fatally hostile to the discharge of the engagements contracted by that Government in the Act of Brussels and thus fatal to the purpose of the powers as represented by that Act. It would further appear that our government, having the power, is under obligation to take this course in view of the extreme gravity of current reports.

“It is noteworthy that in its treaty with the Kongo State our Government makes mention of the obligations which that state has contracted by virtue of the Act of Brussels and indicates its desire to facilitate discharge of these obligations. (Art. X.)” (Senate Document 316, p. 4.)

After stating what were considered to be violations of the rights of commerce granted to American citizens by the treaties with the Kongo State, the Committee expressed in the following words its belief in the justification of humanitarian intervention on the part of the United States: “It is apparent that yet another form of action is open to our government, which has certain rights by virtue of its membership in the family of nations. The reserved right belonging to individuals and nations to protest against iniquity and to intervene for the protection of helpless victims of oppression is inalienable with our government.” (Ibid, p. 4.)

They further drew attention to the advantage which the United States derived from its disinterested situation: “The position of our government, as defined by its relation to the conferences, would seem to give us a unique advantage, in that we have conspicuously declined to accept any form of political benefit in this territory, and may, therefore, act for the protection of its people without suspicion of other than high and generous motives. We recall that in entering the conference at Berlin our representative, Mr. Terrell, said:

“ ‘The Government of the United States has wished to show the great interest and deep sympathy it feels in the great work of philanthropy which the conference seeks to realize. Our country must feel beyond all others an immense interest in the work of this assembly.’ ” (Senate Document 316, p. 5.)

The Committee also quoted the following words of a prominent member of the Conference, relative to the coöperation of the United States:

“We attach the highest value to the coöperation of the United States in our work. We know that their traditional policy is to stand aloof from the treaties and political arrangements of European nations, but the work which we are carrying on is purely humanitarian; its only object is the extinction of the slave trade and the improvement of the negro’s lot, an object for which the United States has so often poured out blood and treasure.” (Ibid, p. 5.)

The Committee concluded: “With an unfaltering confidence that the action taken by our Government will be in accord with these generous sentiments, and that through it this people, disfranchised of the sacred right of life, liberty, and the pursuits of happiness, may rise at length from their low estate to that place in the commonwealth of nations for which development under a just rule may fit them, our communication is respectfully submitted.” (Senate Document 316, p. 5.)

It would seem that the carefully gathered testimony of this distinguished group of philanthropists, and the incontrovertible statement of the principles which they set forth as a basis for the action of the United States, must have influenced Secretary Root, for not long after, he completely changed the attitude he had previously taken, when in reply to Mr. Denby he refused to intervene (see above), and on December 10, 1906, he sent the following instructions to the American Chargé at London: “Moved by the deep interest shown by all classes of the American people in the amelioration of conditions in the Kongo State, the President has observed with keen appreciation the steps which the British Government is considering toward that hu-

manitarian end. You will say so to Sir Edward Grey, inviting from him such information as to the course and scope of the action which Great Britain may contemplate under the provisions of the General Act of the Kongo and in view of the information which the British Government may have acquired concerning the conditions in Central Africa, and you will further express to Sir Edward Grey the desire of the President to contribute by such action and attitude as may be properly within his power toward the realization of whatever reforms may be counseled by the sentiments of humanity and by the experience developed by the past and present workings of Kongo administration. The President's interest in watching the trend toward reform is coupled with the earnest desire to see the full performance of the obligation of articles 2 and 5 of the General Africa slave-trade Act of Brussels of July 2, 1890, to which the United States is a party, in all that affects involuntary servitude of the natives.'<sup>80</sup> (Foreign Relations, 1907, Part II, p. 793.)

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<sup>80</sup>The powers intervening for the protection of the Aborigines in the Kongo district principally relied on articles 2 and 5 of the Brussels act. Article 5 related to the punishment of persons taking part in the capture of slaves, the perpetrators of the mutilation of adults and male infants, and the organizers and abettors of man-hunts. Article 2 of the Brussels Act, more frequently referred to, reads as follows:

“The stations, the cruisers organized by each Power in its inland waters, and the posts which serve as ports for them shall, independently of their principal task, which is to prevent the capture of slaves and intercept the routes of the Slave Trade, have the following subsidiary duties:

“1. To serve as a base and, if necessary, as a place of refuge for the native populations placed under the sovereignty or the protectorate of the State, to which the station belongs, for the independent populations, and temporarily for all others in case of imminent danger; to place the populations of the first of these categories in a position to coöperate for their own defence; to diminish intestine wars between tribes by means of arbitration; to initiate them in agricultural works and in the

On February 15, 1907, the Senate adopted the following resolution introduced by Senator Lodge:

“Whereas it is alleged that the native inhabitants of the Basin of the Kongo have been subjected to inhuman treatment of a character that should claim the attention and excite the compassion of the people of the United States: Therefore, be it

“*Resolved*, That the President is respectfully advised that in case he shall find that such allegations are established by proof, he will receive the cordial support of the Senate in any steps, not inconsistent with treaty or other international obligations, or with the traditional American foreign policy which forbids participation by the United States in the settlement of political questions which are entirely European in their scope, he may deem it wise to take in coöperation with or in aid of any of the powers signatories of the treaty of Berlin for the amelioration of the conditions of such inhabitants.” (Foreign Relations, 1907, Part II, p. 806-7.)

The gravamen of the charge against the Kongo authorities, as summed up in the American memorandum

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industrial arts so as to increase their welfare; to raise them to civilization and bring about the extinction of barbarous customs, such as cannibalism and human sacrifices.

“2. To give aid and protection to commercial undertakings; to watch over their legality, especially by controlling contracts of service with natives; and to lead up to the foundation of permanent centers of cultivation and of commercial establishments.

“3. To protect, without distinction of creed, the Missions which are already or may hereafter be established.

“4. To provide for the sanitary service, and to grant hospitality and help to explorers and to all who take part in Africa in the work of repressing the Slave Trade.”

The General Act of the Conference of Berlin of February 26, 1885, also made provision for the protection of the aborigines of the region in question, but since the United States had not become a party to the Berlin Act, it based its action upon the articles of the Brussels Act.



of a later date (April 7, 1908), was as follows: "The dissatisfaction with the present administration of the Kongo has grown very largely out of its policy toward the native races—a policy which was doubtless not intentionally cruel nor purposely at variance with the acts of Brussels and Berlin, but which, in the opinion of competent investigators, is enslaving, degrading, and decimating the native population. It may be admitted that there has been much exaggeration of the true condition of affairs and that many charges have been refuted, but the fact nevertheless remains that conditions prevail which were neither contemplated nor anticipated when the Independent Kongo State was called into existence by the powers." (Foreign Relations, 1908, p. 560.)

The testimony of the acts of brutality which aroused public opinion and evoked official protest was disclosed in the official reports published by the British and American Governments. It confirmed the statements in the appeal of the Kongo Reform Association. This evidence showed the extreme cruelty and injustice of the treatment of the natives, who were compelled, under the severest penalties to bring in a certain amount of rubber as a payment of taxes.<sup>81</sup>

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<sup>81</sup>See the testimony published in Senate Document No. 316, 59th Congress, 1st Session, and Senate Document No. 147, 61st Congress, 1st session, and in Foreign Relations, 1908.

Consul General Smith's report from Boma, dated March 21, 1908, contains the following: "I have the honor to call your particular attention to the conditions brought about by the excessive rubber tax imposed on the unfortunate natives in this district. The similarity between these conditions and those existing in the region visited by myself are worthy of note. It is no uncommon thing for the rubber gatherers to be eaten by leopards, which abound in many regions of the State, and I well recall the case of a native who had been thus eaten and whose remains—what was left of them—were brought to the State post at Yambata while I was there. The so-called

Separately and concurrently, the British and American representatives at Brussels made emphatic and repeated representations, and urged the adoption of reforms which should, in the opinion expressed by the Government of the United States in the memorandum above referred to, have for their object:

“1. The exemption of the native population from excessive taxation.

“2. The inhibition of forced labor.

“3. The possibility of the natives becoming holders, in permanent tenancy, of tracts of land sufficiently large to afford sustenance.

“4. To make it possible for traders and settlers of all nationalities to secure unoccupied tracts of land, needed for the prosecution and development of peaceful commerce, at reasonable prices, in any part of the Kongo.

“5. The procurement and guaranty of equal and exact justice to all inhabitants of the Kongo through the establishment and maintenance of an independent judiciary.” (Foreign Relations, 1908, p. 560-561.)

Early in 1907, the British Government had expressed its desire that Belgium should annex the Kongo<sup>82</sup> in order that the Free State might be placed under the

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police expeditions mentioned in the report are nothing more than armed raids for nonpayment of rubber taxes and for the purpose of securing laborers to work on the railroad from Kindu south to Portes d'Enfer.” (Foreign Relations, 1908, p. 551.) The evidence collected by the British Consul, Sir Roger Casement, and published by the British Government is referred to in the correspondence.

<sup>82</sup>The British opinion relative to the annexation of the Kongo is indicated in Chargé Carter's report of Dec. 12, 1906. (Foreign Relations, 1907, Part II, p. 793-4. Cf. Minister Wilson's report of February 7, 1907, Foreign Relations, 1907, Part II, p. 806.)

parliamentary control of Belgium. It is easy to understand the reluctance of King Leopold of Belgium to do this. To let his right hand know, as it were, what his left was doing. The demand that Belgium should annex the Kongo found support in Belgium also, where opinion had been aroused by the evidence of the atrocities committed in the Kongo. Those who urged annexation did so on the ground that this would establish a responsible parliamentary government for the regions in question, and put an end to the abuses of uncontrolled and irresponsible exploitation of the natives for purely commercial purposes.

Although we do not find in the diplomatic correspondence any indication that the intervening governments intended actually to have recourse to force,<sup>83</sup>

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<sup>83</sup>Secretary Root, in his instruction to Minister Wilson, January 15, 1907, writes: "Our attitude toward Kongo question reflects deep interest of all classes of American people in the amelioration of conditions. The President's interest in watching the trend toward reform is coupled with earnest desire to see full performance of the obligations of articles 2 and 5 of slave-trade act, to which we are a party. We will cheerfully accord all moral support toward these ends, especially as to all that affects involuntary servitude of the natives. It is the President's desire to contribute by such action toward the realization of whatever reforms may be counseled by the sentiments of humanity and by the experience developed by the past and present workings of the Kongo administration. The Belgian Parliament having adopted principle of annexation and appointed a committee to arrange details, it is alike proper that the wish of the President for substantial improvement of conditions in the Kongo be made known, and that he should for the present observe an expectant attitude, as we understand is the policy of some of the powers signatories to the act of Berlin." (Foreign Relations, 1907, Part II, p. 799-800. Cf. similar instructions to the American Chargé dated December 10, *ibid*, p. 793.)

Sir Edward Grey suggested the advisability of giving the Belgian Government "...a private hint as to the attitude which our two Governments might in certain contingencies be compelled to adopt." (Foreign Relations, 1907, Part II, p. 825.)

the language employed was of a nature to make Belgium understand that if it did not give heed to the emphatic protests of the intervening powers, and make an effort to reform the abuses in the Kongo, the supervisory powers might call a conference, at which it was possible that they might either partition the Kongo Free State, or place it under some other sovereign.

The Belgium Government also could not fail to understand that unless it put an end to the abuses in question, it would incur the condemnation of two powerful governments, and that the whole Belgian people would be pilloried as accomplices of the inhumanity of the Kongo régime. It would be said that Belgium was really responsible for the continuance of the barbarous treatment of the aborigines. That the purpose of these representations was intervention, and not merely a proffer of friendly advice, is shown by the pains taken to give the action of the powers a collective form.<sup>84</sup> This is all the more significant in view of the

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<sup>84</sup>At different periods of this discussion, the American Government appears to have varied somewhat in the degree of intimacy of the collective action which it was willing to take with Great Britain.

January 23, 1908, Minister Wilson reports: "Visited Belgian minister for foreign affairs in company with Sir Arthur H. Hardinge and made representation in accordance with our several instructions." (Foreign Relations, 1908, p. 540. These instructions were that each representative should separately present the representations of his own government. Cf. instructions of March 19, *ibid*, p. 550-551.)

February 28, 1908, Chargé Carter reports Sir Edward Grey as hoping that if further action was necessary it might be "...a joint representation of both our governments, and to that end he would duly inform you of the line he proposed to take, so that the representations in question might be identical.

"He said he welcomed the fact of our working together in this matter, and that the amount of good we were able to do in the Kongo was vastly increased and far greater than their isolated action would be—our action being disinterested was

traditional policy of the United States not to take part in joint representations of any kind.

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open to no suspicion in any quarter—and that he was prepared to go with us as far as we would wish.” (Foreign Relations, 1908, p. 544.)

Ambassador Bryce, in his note to the Secretary of State, March 23, 1908, wrote: “I am now directed by His Majesty’s Government to inform you that they are very sensible of the advantages attaching to the coöperation of the United States Government in their efforts to bring about a more satisfactory state of affairs in the Kongo, and I am to add an expression of their cordial thanks for the communication of Mr. Smith’s report and the consent given to the publication of extracts from it in the papers to be submitted to Parliament.” (Foreign Relations, 1908, p. 553.)

April 1, 1908, Secretary Root instructed Minister Wilson: “You may independently and coincidentally express our views in the same sense as Great Britain does.” (Foreign Relations, 1908, p. 556.)

On February 8, 1908, Secretary Root informed the British Ambassador “...that the department has this day instructed by telegraph the American minister at Brussels to join in representations in the same sense as those proposed to be made by Sir Edward Grey.” (Foreign Relations, 1908, p. 562.) The same day, he telegraphed Minister Wilson: “You will in conference with the British minister and in your representations to the Belgian Government support the line proposed to be adopted by the British minister for foreign affairs.” (Ibid, p. 563.) That this instruction was carried out is indicated in Minister Wilson’s dispatch of April 17:

“Upon receipt of these instructions, I immediately sought an interview with Sir Arthur Hardinge, and informed him that I had been instructed to ‘support the line proposed to be adopted by the British minister for foreign affairs,’ and that I would be glad to have his views as to the course which should be adopted.

“After some discussion it was agreed that on the Monday following Sir Arthur should have an interview with M. Davignon, and hand in his memoranda, and that the presentation of the memorandum from this legation should follow after an interval of three or four days. It was also agreed that in the course of his interview he would advise M. Davignon of the exchange of views which had taken place between the British Embassy in Washington and the Secretary of State, and would

Even though it is true, as the diplomatic correspondence shows, that the intervening governments constantly based their protests upon the failure of the Kongo to fulfil treaty stipulations, the true ground of action was, nevertheless, humanitarian. This is shown by the articles of the treaty and by the references to

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intimate that in all probability a communication in support of the British propositions would be received from this legation.

“In performance of this program Sir Arthur saw M. Davignon on Monday afternoon, and immediately afterwards sent me a note reporting the substance of the interview.

“Yesterday (Thursday, 16th) I visited the foreign office and in the absence of M. Davignon, who was in attendance on the discussion of the Kongo annexation bill in Parliament, I delivered the memorandum (which I had prepared and previously submitted to my British colleague) to the Chevalier van der Elst, secretary general of the foreign office, after having first verbally informed him of its contents. A copy of the memorandum is herewith inclosed.” (Foreign Relations, 1908, p. 568-9.)

In the memorandum which Minister Wilson presented he supported the representation of the British Government relative to forced labor, but in regard to the “...reference to arbitration of all purely commercial and economic questions, the American Government limits itself at this time to an expression of the hope that the Belgian Government may see its way clear to frankly and promptly accept a proposition so reasonable and so entirely in accordance with the rapidly growing practice of civilized nations.” (Foreign Relations, 1908, p. 569.) The memorandum closed with an expression of concurrence with the propositions submitted by the British Government, and the hope that they would receive the careful attention and consideration of the Belgian Government.

April 29, Secretary Root instructed Minister Wilson: “Keeping in touch with the British minister, you will continue to coöperate with him in this matter where the interests of the two Governments are identical, though resting on different treaties. The department will await your further reports.” (Foreign Relations, 1908, p. 572.)

humanity throughout the correspondence,<sup>85</sup> and by the emphasis which is laid upon the disinterested character of the American action.<sup>86</sup> If the United States had no national interest to serve, humanity stands forth as the sole ground of her intervention.

On March 10, 1908, Minister Wilson made the following report relative to the proposed treaty of annexation: "Referring to my No. 306, with which are transmitted copies and translations of the amended treaty of annexation of the Kongo, the 'exposé des motifs' of the ministry, and the royal decree suppressing the Foundation of the Crown, I have the honor to advise the Department that the results secured through the conclusion of this convention would appear to be such as should satisfy international opinion and allay the opposition which existed in Belgium to the project of annexation as conceived by the original treaty.

"The celebration of this treaty and its subsequent ratification by the Belgian Parliament will assure two definite and important results, which stand out clearly in the foreground.

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<sup>85</sup>The powers intervening in the Kongo relied principally upon Articles 2 and 5 of the Brussels Act, which has been already referred to. Great Britain also based its protests upon the violation of the Act of the Conference of Berlin, signed February 26, 1885. But the United States was not a party to this Act.

Some of the instances where considerations of humanity were referred to as a ground for the representations of the powers will be found in the documents from which we have quoted. See, amongst others, Foreign Relations, 1907, Part II, p. 793, 794; Ibid, 1908, p. 541, 542, 550, 560. See also Senate Document No. 316, p. 5.

<sup>86</sup>The disinterestedness of the intervention of the United States is referred to in Foreign Relations, 1908, p. 544, 561. See also Senate Document No. 316, p. 5.



“First, the Domain or Foundation of the Crown—which is only another name for the régime implanted by the King in the Kongo, which, it is alleged, is responsible for the conditions which have provoked international protest and action—is suppressed, and the Sovereign’s autocratic rule of these regions, through a system of secret bureaucracy, is ended.

“Second, the Government of the Kongo, through a responsible ministry with parliamentary control of the budget, in accordance with a colonial law framed under the pressure of an active and vigilant Belgian, as well as international opinion, should make it certain that these regions, with the native population and vast natural resources, will be ruled and administered in harmony with the beneficent prescriptions of the Berlin and Brussels acts.

“Assuming that the treaty of annexation will be approved by Parliament, the first of these objects has been attained, and from the constitution of the committee of seventeen, and the evident temper of the dominant majority in Parliament—which has doubtless been quickened in its conscience by the influence of public opinion in America and England—the second will not be long delayed.

“It does not appear to me that the terms upon which Belgium acquires the Kongo are of great importance from an international standpoint.

“These are considerations which it would appear have to do only with Belgian interests. Our interest in the Kongo question being purely humanitarian in character, we have been concerned only in the abolition of the régime which is held to be responsible for conditions repugnant to civilization and to the humanitarian spirit of this age, and in the substitution therefor of a

constitutional government to be interpreted and executed in a spirit of benevolence and humanity.

“There was some dissatisfaction with the treaty when it was first laid before Parliament, owing to the apparent intention to give the King absolute control of the expenditure of the \$10,000,000 voted to him in recognition of his work in the Kongo.

“This objection, however, was met by a declaration of the prime minister that each annual installment of this sum was to be approved upon by Parliament, in accordance with the Belgian constitution.

“I am of the opinion that the treaty, as now submitted, will receive a substantial majority in Parliament, and that future consideration of the Kongo question will relate to the character of the colonial law.” (Foreign Relations, 1908, pp. 549-550.)<sup>87</sup>

A recent intervention on the ground of humanity very similar to the intervention in the case of the Kongo was undertaken by Great Britain and the United States because of the Putumayo atrocities in the rubber districts in the wilds of Peru.

The Department of State, as early as 1907, received from the American Consul at Iquitos information of the inhumane treatment of the Peruvian aborigines employed in collecting rubber in the Putumayo district on the upper Amazon.

The reasons which the Department of State con-

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<sup>87</sup>This account is based upon the somewhat voluminous correspondence contained in Foreign Relations, 1905, p. 87-93; *ibid*, 1906, Part I, p. 88-105; *ibid*, 1907, Part II, p. 791-829; *ibid*, 1908, p. 537-593; Affairs in the Kongo, Senate Document No. 147, 61st Congress, 1st Session; Alleged Conditions in Kongo Free State, Senate Document No. 316, 59th Congress, 1st Session. In Foreign Relations, 1909, p. 400-414 and Foreign Relations, 1910, p. 686-693, will be found some further correspondence relative to fulfilment by the Belgian Government of the expected reforms in the annexed territory.

sidered as a sufficient excuse to intervene upon the ground of humanity were later stated by Secretary Knox when, on February 4, 1913, he transmitted for presentation to Congress the evidence of the atrocities which had been committed:

“This report,” wrote Mr. Knox, “while exhibiting the condition of virtual slavery to which the native tribes were subjected, showed that the cruelties so disclosed were not the work of American citizens, nor affected American interests, and it would seem, did not call for representations to any of the three governments concerned in the disputed territory. Indeed, the prospect that the controversy as to the sovereignty in that quarter was about to enter on an acute state might have made it a delicate matter for a neutral government to impute territorial responsibility to any one of them.” (Foreign Relations, 1913, p. 1242.)

Acting Secretary of State Wilson, in his instructions of April 6, 1912, to Mr. Stuart J. Fuller, American Consul at Iquitos, informs him of the subsequent events which had led the Department of State to reopen the American Consulate at Iquitos, and to undertake an investigation of the treatment of the aborigines in the Putumayo district. We quote this document in full:

“In arriving at the decision to reopen the American Consulate at Iquitos, Peru, the Department has had primarily in view the advisability of securing information as to the labor conditions along the affluents of the upper Amazon, and particularly the Putumayo River. Reports transmitted to the Department by Mr. Eberhardt formerly American Consul at Iquitos, during 1907 and 1908 indicated that those directing the gathering of rubber in the territory claimed by Peru to be within her jurisdiction were responsible for practices

of exploitation of the native Indians which threatened the complete extinction of the primitive races. Subsequent to the receipt of the reports of Mr. Eberhardt by the Department the British Government, which was in possession of information concerning the horrible condition existing in the forests of the Putumayo within the concession of a British corporation, directed His Britannic Majesty's Consul General at Rio de Janeiro, Sir Roger Casement, to make personal examinations of the situation. Previous to this time this government had been in consultation with the British Embassy at Washington, with a view to coöperation in representations to the Government of Peru in order that the Peruvian Government might undertake a thorough investigation of the subject and obtain such first-hand information regarding the brutal extermination of the native inhabitants of one of the important outlying Provinces of Peru as would impel it to take the remedial measures that the circumstances appeared imperatively to demand. Owing to the imminence during the early months of 1910 of an outbreak of hostilities between Ecuador and Peru because of conflicting claims of these countries regarding the territory of which the Putumayo region was a part, the Government of the United States at that time deemed it wise to postpone communication with the Government of Peru on the matter until the outstanding dispute, which it was then hoped was approaching settlement, had been terminated. It was felt that, the international situation having become tranquilized and the question regarding the title over the upper Amazon region decided, such representations as the Government of the United States might determine to make in the matter would more certainly produce the results which it was desired to bring about.

“During the early part of 1911 the Department was informed, through the British Embassy at Washington, that as a result of the efforts of the British Minister at Lima, acting under instructions from his government, the Peruvian Government had appointed a commission to proceed to the Putumayo region and report on conditions there found to exist. The Department, to which the cause of the defenseless natives of the Putumayo had so strongly appealed for humanitarian reasons, had received information from time to time of the views of the British Government in the matter and in regard to the steps which the British Minister at Lima had been instructed to take. During the months of April and May of the past year the British Ambassador at Washington transmitted, for the confidential information of the Department, copies of three reports of His Britannic Majesty’s Consul General at Rio de Janeiro, which presented the horrible details collected by personal observation of the methods employed in the collection of rubber by the employees of the rubber company in the Putumayo district. These reports relate the appalling brutalities and atrocities from which the native rubber gatherers of the forest of the Putumayo were suffering. Copies of these pamphlets and other reports of more recent dates are attached for your information and for the files of the Consulate.

“On the 17th of July last the American Minister at Lima was instructed to express to the Peruvian Foreign Office, at a favorable opportunity, the pleasure that was felt by this Government upon learning of the steps initiated by Peru, inspired by the high ideals of serving humanity, to put an effective end to the excesses in the Peruvian rubber forests of the Amazon Valley by dispatching a judicial investigating commission to the Putumayo. The Minister was also directed to ex-

press the hope that adequate and vigorous measures would follow to put an end to the reported barbarous system in vogue, which threatened to accomplish the complete extinction of a defenseless people. It was at this time pointed out that Peru would undoubtedly understand the friendly spirit prompting a mention of this matter by the Government of the United States and would realize that there was no disposition or intention present to offend by referring to a matter concerning the internal affairs of Peru.

“It has subsequently developed from information before the British Government, that the action taken by the Peruvian Government in organizing this commission has almost entirely failed of its object. The corrupt influence of those responsible for the conditions in the Putumayo has been seemingly so powerful as to defeat the laudable ends of the Central Government. As a result a few of the underlings have been arrested while no serious effort has been made to apprehend or punish the leaders. It is alleged that the local administrative and judicial authorities residing at Iquitos have afforded such improper protection to those guilty of the atrocities systematically practiced upon the natives as to make it impossible to bring the criminals to justice without a thorough carrying out of drastic administrative local reforms. Unless the Central Government of Peru takes a vigorous and earnest stand it is to be apprehended that the practices which, it is understood, have been temporarily suspended as a consequence of the measures already taken by the Government, may be resumed in all their former intensity until the native tribes will have become completely exterminated.

“The Department has been in recent close communication with the British Foreign Office, following several personal conferences with Sir Roger Casement at

the Department. It appeared that the British Government was seriously contemplating the publication of the evidence on the Putumayo in its possession in the belief that such publicity might provide an effective remedy to the shocking situation. However, at the suggestion of this Government, the publication of the reports was withheld pending further representations to the Government of Peru on the subject. The Department therefore, informed the American Minister at Lima of the apparently well-founded rumor that no really serious efforts are being made to prosecute those responsible for the atrocities in the Putumayo, and to instruct the Legation to coöperate with the British Legation in taking the matter up again unofficially and informally with the Peruvian Minister for Foreign Affairs. In these representations the American Minister was directed to advise the Government of Peru that it was understood that the official reports on the situation in the Putumayo probably could not be withheld much longer from publication, the details of which inevitably would be exploited in all parts of the world by the press. The American Minister was directed to say that unless drastic and effective action demanded by the circumstances was taken by Peru previous to the publication of this evidence, which appeared imminent, such an exposure of the situation as almost surely must follow might induce public opinion of the world to believe that Peru had shown herself unable effectively to exercise sovereign rights over a region to which Peru lays claim and the ultimate rights to (sic) which Peru desires to submit for determination to arbitration.

“The British and American representatives at Lima had a conference during the early days of February with the Peruvian President and Minister of Foreign Affairs. The Peruvian Government stated that it was



endeavoring by all means within its power to bring to justice those charged with the crimes in the Putumayo, and welcomed suggestions as to a system of reforms which would guarantee adequate protection to the Indians within its jurisdiction. The difficulties of the problem presented to the central administration were emphasized—the unsatisfactory communication between Lima and Iquitos; the difficulty of finding men worthy of being intrusted with the administrative functions in that outlying region; the barrier presented by the topographical character of the wild region of the upper Amazon; and the almost absolute impossibility of counteracting the influence of those identified with the continuation of the present iniquitous system.

“Under the circumstances at present existing and after careful consideration of the reports which were received from the American Legation at Lima and the information transmitted by the British representative, kindly furnished through the British Embassy here, the Department has informed Ambassador Bryce that it deferred to the judgment of the British Government in fixing the time for the publication of the Casement reports. The Embassy at the same time was informed that the Department could not but believe that the Peruvian Government should properly regard any publicity given to the matter as in accord with the purposes so frequently enunciated by the Peruvian Government of doing everything within its power to put an end to the inhuman treatment of the Indian populations. Further, it was felt by the Department that the publication was strongly recommended in view of the efforts that are being made to procure funds by public subscription making it possible to establish in the Putumayo region missions for work among the Indians. The British Government now states that it will

proceed with the immediate publication of the reports in its possession regarding the situation of the Putumayo.

“You will make yourself thoroughly conversant with the local situation upon arriving at your post and keep the Department fully and promptly informed regarding this subject, in which the Department is taking the keenest interest.

“You will, upon consultation and coöperation with the British Consul at Iquitos, make arrangements to visit, at intervals which may in your judgment appear advisable, the rubber stations along the Putumayo region in order that the Department may have before it your views, based upon personal observation. For this purpose a special allowance of not to exceed \$500 is hereby granted you.” (Foreign Relations, 1913, p. 1243-6.)

The method and object of the investigation by Mr. Stuart J. Fuller, the American Consul at Iquitos, are given in his report of July 31, 1912, as follows:

“When I have been asked, and a reply seemed necessary or politic, I have stated that I have neither desire nor instructions to interfere in any way whatsoever with the administration of justice or the internal affairs of Peru, but that in the course of duty it falls to me as a consul to keep my Government informed as to labor as well as other commercial conditions in the district in which I may be stationed, no matter what part of the world, and that I shall report on these in the Putumayo as well as in the other rivers of the district; and that as public subscriptions are being collected abroad by persons with the same high ideal of serving humanity that has actuated the Peruvian Government in the steps it has inaugurated to put an end to excesses in the Putumayo region, for the announced purpose of

sending missionaries to that region, information is desired as to the condition that American citizens coming on this mission may meet with and the conditions under which the money will be expended.”<sup>88</sup> (Foreign Relations, 1913, p. 1263.)

In the same report, Consul Fuller says of the concurrent investigation by the British Consul, Mr. George Babbington Mitchell, who accompanied him:

“My British colleague has based his action in the matter on four grounds:

“1. The responsibility of an English company, still in existence though in process of liquidation, for the atrocities in the past and their share in the responsibility for conditions in the present.

“2. The presence in the region of British subjects.

“3. The collection in Great Britain of subscriptions with the object of sending missionaries to the region.

“4. The general idea of serving humanity by reporting to his government the true conditions, to be published if they see fit.” (Foreign Relations, 1913, p. 1263.)

The Peruvian Government and the companies in control of the rubber district put what obstacles they could in the way, to prevent the consuls from procuring from

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<sup>88</sup>Consul Fuller’s statement cannot be considered as a frank description of his real purpose. The investigation, according to the statement of the Consul himself, was undertaken in opposition to the real wishes of the Peruvian Government. (See Foreign Relations, 1913, p. 1262.)

We note here an embarrassment evidently due to the unfortunate and unfounded belief that intervention upon the ground of humanity is not justifiable in international law. We find this same erroneous opinion expressed by Secretary Knox in his letter of February 4, quoted above. The British Government does not appear to have fully concurred in this opinion, since the British Consul gives humanity as one of the grounds justifying him in undertaking the investigation.

the natives themselves full information of the actual conditions in the district.<sup>89</sup>

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<sup>89</sup>Cf. Acting Secretary of State Wilson's comment quoted above upon Peru's conduct of her own investigation. (Foreign Relations, 1913, p. 1244.)

In his report of July 31, 1912, Consul Fuller writes:

"Although I am unable to point out at present anything specific, still my impression is now that the government is no more anxious to have us make a trip to the Putumayo or to see personally the conditions existing there than the company is, so that we should probably gain no more information from a trip on one of the government launches than from that of the company."

In the same report he writes:

"In making our arrangements with the company, we insisted on paying our passage and stated that we also wished to pay for anything that we might find it necessary to buy up the river, although they offered us free passage and all we might need."

Further along he remarks:

"The local situation remains much the same as it was two weeks ago, so far as the Iquitos public in general is concerned. The tone of the articles that have been appearing in the public press has produced, however, a feeling of irritation and resentment at what they privately characterize as meddling on the part of the United States and England among the Government officials here, but to both Consul Michell and myself they have continued studiously courteous. The officials are undoubtedly becoming nervous in regard to the situation.

"My British colleague and I called on the acting prefect and applied for some document in the nature of a passport, to be addressed to the local authorities, and this he said he would be glad to give us. He also suggested sending a military aide to accompany us, and though we were by no means enthusiastic over this proposition I fear that we may not be able to avoid it." (Foreign Relations, 1913, p. 1262; Cf. p. 1244-5, quoted above.)

Consul Fuller closed his report of August 6 as follows:

"I regret that both the company and the Government adopted the course of preventing us from seeing the actual conditions wherever possible, but trust that the course I pursued in the matter may meet with the department's approval." (Foreign Relations, 1913, p. 1278.)

From the reports of Consuls Eberhardt, Fuller, Mitchell, and Casement, the prevalence of horrible conditions in the Putumayo district was established beyond any possibility of doubt."

We do not wish to dwell upon the appalling brutalities to which the Peruvian aborigines were subjected. Consul Eberhardt, in his report (1907) explains how the indebtedness of the Indians for the food which was supplied them resulted in a system of peonage, and these peons, held in a bondage of debt, could be transferred from one employer to another. If the poor Indian attempts to run away, he is tracked in the forest by hostile Indians who bring him back, dead or alive. Consul Eberhardt relates all manner of cruelties practiced upon these peons: the beating and kicking of Indian women, the dashing of a baby's brains against a tree because it "...seemed to interfere with her [the mother's] bringing in a sufficient amount of rubber...", the disemboweling of a pregnant woman with the stroke of a sharp machete, and other horrors of a similar nature. (Foreign Relations, 1913, p. 1247-9. Cf. Ibid, p. 1242-4. See also "Slavery in Peru," House Document No. 1366, 67th Congress, 3rd Session.)

Testimony of similar atrocities are published in the reports of the other consuls.

Consul Fuller gives the following account of the labor situation in Peru: "In the second place, for a full comprehension of the existing situation it is necessary to examine into the general labor situation throughout this part of Peru. An important factor in this phase of the situation is found in the ancient, deep-rooted, and almost universal attitude of the Pe-

<sup>90</sup>See Foreign Relations, 1913, p. 1242, 1244, 1246-9; see also "Slavery in Peru," House Document No. 1366, 62nd Congress, 3rd Session.

ruvians, who, while they may not approve of cruel and inhuman treatment, generally regard the Indians as placed here by Providence for the use and benefit of the white man and as having no rights that the white man need respect.

“This attitude of the people has found concrete expression in the universal system of peonage, an old institution, well established, recognized by law, and which has come to be the basis on which the rubber business (the sole industry of trans-Andean Peru) almost entirely rests. The system of advancing supplies, necessities and luxuries, to peons and rubber gatherers is universal in this part of Peru and has led to the establishment of what is virtually a slave trade. The trades encourage the “patrons” operating rubber sections to continually enlarge their spheres of operations, so that they will have more rubber to sell and can buy more imported goods. Labor being comparatively scarce and expensive throughout the district, it is to the patron’s interest to get those working for him hopelessly into his debt, which means that he can retain their services as peons until they pay this off. It is difficult to maintain that this system of servitude is not recognized, since it is universal and, while never discouraged by the authorities, is certainly in many cases upheld.

“It simply means that the native who is unable to pay for the advance he has been encouraged to take is seized by the patron who designedly advanced him more than he could pay for, and is compelled to work off the debt. As he must be lodged and fed in the meanwhile, the cost of this is added to his old debt, and, by further advances, care is taken to keep the debt at a point where it can never be overtaken. As these claims are transferable, the person of the debtor being also transferred to the new creditor, the Indians and their

families are really bought and sold, passing from hand to hand under a system that bears a striking resemblance to actual slavery." (Report of Oct. 28, 1912, Foreign Relations 1913, pp. 1251-2.)

The Indians are, according to Consul Fuller's report, "...mild, docile, inoffensive, and childlike, just as they are reported to have been by Robuchon the explorer, by Consul Eberhardt, and by Sir Roger Casement." (Foreign Relations, 1913, p. 1269.) He remarks, "I doubt whether they know the difference between proper treatment at the hands of the whites and maltreatment, for the simple reason that the first idea of the white man they had was bad usage. In case of any trouble they would not be likely to appeal to the authorities. They would not understand how, and they have no conception of government. The only way to protect them is to watch over them and their interests." (Ibid, p. 1269-1270.)

In his report of October 28, 1912, Consul Fuller remarks: "As to the past, the truth is that the district was the ash barrel of both Peru and Colombia, and the concessionaires, though cognizant of this, were so anxious to make money that they took into their employ without investigation any of the ashes who professed a willingness to work. The deplorable result is already known to the Department. It was due to the criminal negligence of the Peruvian and British concerns, who in turn controlled the district, and the total absence of Government supervision. The British directors who entrusted the conduct of their business here entirely to Peruvian hands cannot rely on that as relieving them from responsibility in the matter." (Foreign Relations, 1913, p. 1278).

After it was evident that the Peruvian Government would not undertake any adequate measures of reform from sentiments of humanity, the hope seems to have



been entertained that the fear of losing the territory in question might stimulate the zeal of the Government, and check the gross outrages committed by the agents of the companies upon the aborigines. (Ibid, p. 1245, p. 1273-4.)

Peru was given to understand that her claim to the sovereignty of the regions in question might be impeached with success by the other claimant governments if it were admitted that Peru could not police the territory to which she laid claim. (Ibid, p. 1245.)

For the purpose of bringing the pressure of public opinion to bear upon Peru, the British Government had proposed to publish the Casement report containing evidence of the atrocities committed in the Putumayo district, and after the American Government withdrew its objections, a blue book was issued, July, 1912.<sup>91</sup> The

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<sup>91</sup>This blue book is reproduced in House Document 1366 on "Slavery in Peru," 62nd Congress, 3rd Session. It contains a note which Secretary Knox addressed May 24, 1912, to the British Chargé in which, at the last moment, the Secretary suggested that the publication of the evidence be deferred in view of the new legislation promised by Peru.

Secretary Knox wrote: "In view of this positive manifestation of the purposes of the Government of Peru, I have the honor to inquire whether His British Majesty's Government might not be of the opinion that it would be most conducive to the attainment of the ends desired to postpone for the present the publication of the correspondence transmitted with your note under acknowledgment." (Slavery in Peru, House Document No. 1366, 62nd Congress, 3rd Session, p. 441.)

In consideration of the evidence of the bad faith and procrastination of the Peruvian Government then before Secretary Knox, it is hard to understand what good purpose could have been served by this delay.

Sir Edward Grey, in his reply, June 27, 1912, said: "I am unable to fall in with Mr. Knox's view that publication might with advantage be deferred, as I am convinced that an authoritative account of the facts of the case cannot but assist the Peruvian Government in their reforming efforts and direct them to the proper channels." (Ibid, p. 442.)

London *Times*, in an editorial of July 15, 1912, commented severely upon the atrocities revealed in this publication (Foreign Relations, 1913, p. 1240).

The House of Representatives took notice of this statement, and in a resolution of August 1, 1912, directed the Secretary of State, "if not incompatible with the public interest, to transmit to the House of Representatives all information in the possession of his Department concerning the alleged existence of slavery in Peru, and especially all information tending to show the truth or falsity of the following statement made in an editorial in the London *Times* of July fifteenth, nineteen hundred and twelve: 'The bluebook shows that in an immense territory which Peru professes to govern the worst evils of the plantation slavery which our forefathers labored to suppress are at this moment equaled or surpassed. They are so horrible that they might seem incredible were their existence supported by less trustworthy evidence.' " (Foreign Relations, 1913, p. 1240.)

In response to this resolution, Secretary Knox transmitted the correspondence and documents from which we have been quoting in the preceding pages.

February 6, 1913, Ambassador Bryce addressed the following note to the Secretary of State:

"Sir: With reference to previous correspondence relative to the Putumayo atrocities, I have the honor to transmit to you, herewith, two copies of a dispatch from His Majesty's Consul at Iquitos reporting on the recent visit to the Putumayo district, which he carried out in the company of the United States Consul, Mr. James Fuller.

"In communicating this report to you I am to ask you to be so good as to furnish His Majesty's Government with a copy of Mr. Fuller's report on the visit and to favor me with the expression of your views on the

general question and on the action which the two Governments should or can now take.

“I am also to inform you that in the opinion of His Majesty’s Government the Peruvian Government should be given an opportunity of offering any observations they may desire to make on the reports of the two Consuls before these reports are published.” (Foreign Relations, 1913, pp. 1287-8.)

In his reply, Secretary Knox said:

“Before transmitting this correspondence to the President, the Department of State conferred with the Peruvian Minister, apprizing him of the general tone of Mr. Fuller’s findings. Mr. Pezet thereafter described the measures recently adopted by the Peruvian Government with a view towards ending the mistreatment of the Putumayo Indians and made renewed assurances, on behalf of his Government, to the effect that it would henceforth rigorously enforce law and order throughout the rubber-producing district of Peru.

“In your excellency’s note under acknowledgment you were good enough to ask for an expression of my views regarding the Putumayo question and the action now called for thereon. In reply I may say that, in view of the rigorous policy apparently animating the present administration in Peru, the remoteness of the district and the attendant obstacles in the way of effective reform I am of the opinion that any further action on the part of His Majesty’s Government or of the American Government would appear inopportune, at least at the time being, inasmuch as it might be instrumental in stirring up public sentiment in Peru to such an extent as to hinder whatever real desire now exists there for bettering the conditions under which the Indians labor.” (Foreign Relations, 1913, p. 1288.)

Again on September 10, 1913, the British Ambassador, Sir Cecil Spring Rice, wrote the Secretary of State:

“On February 25 Mr. Knox forwarded to my predecessor a Congressional document containing, among other correspondence regarding the Putumayo question, the report of the American Consul at Iquitos, Mr. Fuller, on conditions in that region of Peru.

“I need not recall to your mind the particulars of this question which has engrossed the attention of our two governments for the last two years, but I have now been instructed by Sir E. Gray to inquire what conclusions you have arrived at in regard to Mr. Fuller's report.

“I should therefore be much obliged if you could give me your views on the question and could indicate to me the policy which you think it best to adopt in the present position of affairs.” (Foreign Relations, 1913, p. 1289.)

No further action is disclosed in the correspondence published in Foreign Relations for 1913, recently published by the Government. For some reason not stated in the correspondence, the Department of State at that time was unwilling to coöperate with Great Britain in undertaking a humanitarian intervention which would have had a salutary effect upon Peru and other countries which, in violation of international law, condone and protect the perpetrators of atrocities upon defenseless aborigines.

#### § 8(e). SUPPRESSION OF THE SLAVE TRADE

Several decades before slavery itself was recognized as contrary to international law, the slave trade was held to be illegal by a consensus of opinion on the part

of the powers who undertook measures of coöperation for its suppression.<sup>92</sup> The willingness of the great

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<sup>92</sup>The slave trade was a natural adjunct of slavery when the latter was fully recognized as an institution of the law of nations, but the manifest and frightful cruelties which were inseparable from the commerce in human beings came to be considered by a consensus of the civilized powers as so gross a violation of humanity as to justify the exercise of constraint against any state which tolerated it under its flag. In other words, the slave trade became illegal and a sufficient justification for humanitarian intervention against any government countenancing it.

The late Alpheus H. Snow has made a thorough study of the history of the abolition of the slave trade (in his *The Question of Aborigines in the Law and Practice of Nations*, chap. VII, p. 85-100), and reaches the conclusion that "...undoubtedly 'the slave trade,' in the technical sense, is now contrary to the universal, or common, law of nations. A state which should authorize its citizens to engage in it would, it would seem, clearly violate the law of nations. A state which should even tolerate traffic in slaves, as a social institution, in any place under its sovereignty, would undoubtedly at the present time subject itself to international repressive or punitive action, unless it could show, in its own defense, that it had done, and was doing, everything possible to abolish the traffic."

Hall lends his authority to this view. He writes (*International Law*, 4 ed, § 108, p. 343): "Thus a compact for the establishment of a slave trade would be void, because the personal freedom of human beings has been admitted by modern civilized states as a right which they are bound to respect and which they ought to uphold internationally."

One is surprised to read in Westlake (*International Law*, vol. I, p. 170): "Thus for the detection and suppression of the slave trade, there is no right of visit and search by general law, but only by treaty between states which have conceded it to one another in their just hatred of that traffic, which, however abominable, has never been regarded as an international offense." (Cf. Woolsey, 6 ed., §§ 215-218, p. 370-378). The offense, it is true, is primarily one for repression by each sovereign and not like piracy, one which may be punished by all the states, but it is, nevertheless, an offense against international law for the suppression of which each government is responsible, and a failure to fulfil this obligation is in itself an international offense.

powers to intervene to suppress the slave trade has been shown upon several occasions. Layard, the Brit-

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The following excerpts from the notes and correspondence of Sir Frederick Rogers [later Lord Blachford] indicate the zeal with which the British Government under Lord Palmerston used its influence to repress the slave trade.

“The English nation, while its own interests are not very visibly and gravely concerned, has a strong vein of philanthropy, but it is in regard to negro slavery that this feeling has so taken hold of the people, and is so powerfully organized as to become a political influence. Partly on this account and partly also, I doubt not, from genuine conviction, Lord Palmerston had taken up this particular question, and felt himself bound to assist, if possible, certain plans of the French Government for conducting an immigration from the West Coast of Africa to the French negro colonies, which was supposed to have hitherto covered a disguised slave trade.

“The French Government, pressed by its planters, did not venture simply to suppress this, and, I take it for granted, replied to a remonstrance by pointing to our own coolie emigration (which it had for some time been my special function to superintend). At any rate, Lord Palmerston, then Premier, and Lord Clarendon, then at the Foreign Office, suggested to the French that, if they would give up their African emigration, they might be allowed to take coolies from India to their colonies on the same terms (*mutatis mutandis*) as those on which they were taken to English colonies. Neither the India Office, nor the Colonial Office, much liked this arrangement, because it appeared probable that, since we had not been more than able to protect the coolies in our own colonies, we should be less than able to protect them in those of France; and so the evil of quasi-slavery might exist, the responsibility of it merely being transferred from the Foreign Office (which was bound to protect the Africans) to us, or rather to the India Office, which was bound to protect the Indians.” (Marindin: Letters of Lord Blachford, p. 170-171.)

Sir Frederick Rogers sums up a long harangue of Persigny relative to the relations between France and England in their bearing on the negotiation in hand: “The sense is this. The French Government have promised their colonies to revive the slave trade (in substance), the English make such a row about this that it may lead to war or something like it, unless the dispute is evaded. The French Government is too far pledged to *give in visibly*, whether wrong or right. But if you will let us get emigrant laborers from India instead of buying slaves in

ish Ambassador at Madrid, when approached by the American representative in regard to humanitarian

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Africa, we will give up the African enterprise and tell our colonists that we have made a capital bargain for them, and so we shall be out of the mess altogether.” (Ibid, p. 175.)

In reference to the space allotment for coolie emigrants, Sir Frederick Rogers writes: “I was much amused at one point which I tried to make. The French pack their emigrants and ships *twice* as close as we do, and yet they have had very good passages. Of course they object to imposing on themselves our strict law, and I wanted to come to some compromise, so I tried to find what would pacify them, and suggested 50 cubical feet *par personne*. This posed old Persigny, who wanted to know what it meant; and betook himself in a vague perplexed way, like a puzzled linen-draper, to a measuring tape which he began to pull out, and measure distances in the air as if that would help him. So I explained that 50 cubical feet was 6 feet long 1½ feet broad and 5½ feet high, or to make the matter more intelligible, if he would imagine the whole ground pretty well covered with human beings lying at full length, and 5½ feet of height above them, that would be the thing—‘and,’ I added, ‘I don’t think you can well give a man less than *that*.’ I shall not easily forget the mixture of disgust and astonishment and amusement with which he burst out ‘Sacré-Dieu! non! they will all be sick’ (or rather ‘seek’) ‘too,’ on which I began to repent me of having given in so much, and tried to retrieve a point or two, with what success remains to be seen.” (Ibid, p. 178-9.)

An extract from another letter shows how large an account was taken of public opinion in regard to the commerce in human beings: “He read me a long list of the ‘Minister of Marine’s’ objections to what I may call my requirement, that the French should collect emigrants for themselves instead of throwing it on the British Government, and of his own reply which was characteristic and amusing. The civil deference with which the objections of the ‘Marine’ were magnified and evaded was very French; and an elaborate argument that the *cordial and bona fide* coöperation of the English Government might be counted upon because the success of the scheme was the only way in which Lord Palmerston could escape from allowing the French emigration from Africa and so incurring the pressure of public opinion, ‘which is so susceptible à cet égard’ and of ‘la Société Biblique’ (which was made to figure as a great political power), was wonderfully characteristic of a French view of English manners.” (Ibid, p. 180.)



intervention in Cuba, expressed a readiness to support the views of the United States, saying that England also had abundant cause to intervene in Cuba on account of the slave trade (Callahan: Cuba and International Relations, 1899, p. 423).

At the close of his career in 1864, Lord Palmerston, then Prime Minister, wrote the following letter to Sir John Crampton, the British Ambassador at Madrid:

"I have been reading your account of your representation to the Spanish minister about the slave trade, carried on for the supply of Cuba. Your arguments are perfectly just, and your statements are all borne out by facts. If you have occasion to talk with him again on these matters, you may say, as a proof that the feeling against the slave trade is not confined in England to enthusiasts and West Indian proprietors, that there are no two men in England more determined enemies of the slave trade than Lord Russell and myself, and certainly we are neither of us bigoted enthusiasts nor West Indian proprietors, but we have both labored assiduously and with much success for the extirpation of that abominable crime.

"During the many years that I was at the Foreign Office, there was no subject that more constantly or more intensely occupied my thoughts, or constituted the aim of my labors; and though I may boast of having succeeded in accomplishing many good works—and among them materially assisting the Spaniards to get rid of their tyrannical dynasty, and to establish Parliamentary Government—yet the achievement which I look back to with the greatest and the purest pleasure was the forcing the Brazilians to give up their slave trade, by bringing into operation the Aberdeen Act of 1845. The result, moreover, has been greatly advantageous to the Brazilians, not only by freeing them from a grievous crime, but by very much improving

their general condition...'<sup>33</sup> (The Life of Vicount Palmerston, by Evelyn Ashley, II: 263-4).

In 1862-1864, the British Government intervened to prevent the importation into Peru of Polynesians as laborers under conditions of extreme cruelty approximating a condition of slavery.

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<sup>33</sup>The British representative, February 12, 1863, addressed the following note to the Brazilian Government:

“Her Majesty’s Government are of opinion that the effect of the new regulations for the government of negroes in the Itapura establishment is, practically to consign to forced servitude for six years men, women, and children who are free according to the showing of the Brazilian authorities themselves; and Her Majesty’s Government consequently feel themselves bound to require that these Africans, who were liberated under British auspices, shall not be subjected to the regulations in question.” (Parliamentary Papers, 1863, vol. 73, Correspondence Respecting Liberated Slaves in Brazil, [3189].)

Ashley, writing of Lord Palmerston’s efforts to suppress the slave trade and to discourage slavery says: “For nothing will Lord Palmerston be more honorably remembered than for his long and successful efforts for the suppression of the slave trade and the discouragement of slavery. From the moment that he was called to the Foreign Office in 1830, he entered warmly into the subject, and with his whole heart labored for their extinction. He sought to engage all maritime states in one great network of treaties for the combined annihilation of this nefarious traffic in human beings, and to a large extent he succeeded. Some of the Spanish and other diplomatists used to be quite surprised at what they thought his craze, and were fain to humor him on, what they considered, so insignificant a matter. When action succeeded to negotiation—as, for instance, in the decisive blow dealt in 1840 at the Portuguese slave dealers by the destruction of their barracoons on the West Coast of Africa—he never allowed any consideration for the susceptibilities or anger of foreign Governments to induce him to halt in his course. On the contrary, when the country, sick with deferred hopes and aghast at the expense of the necessary squadrons, seemed, at one moment, disposed to flinch, his earnest language, conveying lofty aspirations, maintained its spirit and strengthened it for renewed efforts.” (Ashley’s Life of Palmerston, vol. II, p. 228.)

The British Minister, in his report of May 29, 1863, enclosed a copy of a declaration of the Diplomatic and Consular body at Lima, in regard to the abuses committed on the Polynesians. The declaration as translated into English read as follows:

“The Diplomatic and Consular Corps resident in Lima met on the 13th of May, 1863, in this city, and declared:

“1. That the Diplomatic and Consular Corps deplore as deeply as the Government of Peru, the horrible abuses committed in the Polynesian Islands by expeditions that tried to obtain laborers, in violation of the laws and of the licenses given to bring those laborers to this Republic.

“2. That they are happy to express their satisfaction at the suitable measures taken by the Government of Peru to prohibit said traffic, carried on in violation of the laws and of the licenses conceded.

“3. That they are also happy to assure their respective Governments, that the measures taken by the Government of Peru have supported morality, justice, and humanity.

“In continuation, they decided that this act be copied in the records of the diplomatic corps, and that after being signed, a copy be presented to his Excellency the Minister of Foreign Affairs and President of the Council of Peru, by the Chargés d’Affaires and Consuls-General of France and the United States of Colombia; every member of said corps, moreover, sending a copy to his own government.”

“(Signed)

CHRISTOPHER ROBINSON, *Envoy Extraordinary and Minister Plenipotentiary of the United States of America.*

THOMAS ELDBEDGE, *Chargé d’Affaires and Consul-General of Hawaii.*

EDMUND P. DE LESSEPS, *Chargé d'Affaires and Consul-General of France.*

WILLIAM STAFFORD JERNINGHAM, *Chargé d'Affaires and Consul-General of Great Britain.*

JUAN DUARTE DA PONTE RIBEYRO, *Chargé d'Affaires of Brazil.*

PROSPERO PEREIRA GAMBA, *Chargé d'Affaires and Consul-General of the United States of Colombia.*

CELEDONIO URREA, *Chargé d'Affaires of Ecuador.*

J. CANEVARO, *Consul-General of Italy.*

W. BRAUNS, *Consul-General of Hamburgh.*

G. ESCARDO, *Consul-General of the Argentine Confederation.*

A. EVARISTO DE ORNELLAS, *Consul-General of Portugal.*

J. GILDEMEISTER, *Consul-General of Bremen.*

A. GREULICH, *Consul of Frankfort.*

TH. MULLER, *Consul of Prussia and Hanover.*

F. OYAGUE, *Consul of Venezuela.*"

In the form of a congratulation that the system had been abolished, this declaration evidently was intended to register a formal disapproval of the traffic. Notwithstanding this, the British *Chargé*, in the same note in which he enclosed the declaration above given remarked: "None of these being British subjects, I do not see how far I am authorized in interfering except by moral reprobation of acts evidently inhumane in their consequences, and which ought to be properly punished by those to whom it legally pertains to inflict the deserved castigation."

But the British Minister for Foreign Affairs took a different view. Lord John Russell in his instructions of March 18, 1864, wrote:

"In your dispatch of the 12th May last you inclosed to me a note from the Peruvian Government, stating that that Government had abolished the system which had been adopted for the introduction into Peru of

natives of the Polynesian Islands, and which had given rise to such horrible abuses.

"I received this intelligence with satisfaction, and approved of the steps taken by you in carrying out the instructions which you had received from me in the matter.

"You will continue to bear the subject in mind, as it is not impossible that, although the system has been abolished, steps may be taken indirectly to carry out the objects contemplated by the parties concerned, thus causing fresh evils and crimes. In such case, it will be your duty again to remonstrate on the part of Her Majesty's Government, and I shall be glad to learn that your diplomatic and consular colleagues have coöperated in your representation." (Parliamentary Papers, 1864, vol. 66 [3307].)

In 1888-89, the European powers instituted a pacific blockade of the coasts of Zanzibar, generally stated to have had the purpose of preventing the exportation of slaves (see T. E. Holland: *Studies in International Law*, p. 139-140; Hogan: *Pacific Blockade*, p. 130-137.)

But P. L. McDermott, an official of the British East Africa Company gives the following account based upon the official documents and his own knowledge of the events recorded: "An important consequence of the troubles on the German coast was the establishment by Great Britain and Germany of a joint blockade of the mainland coast of the Zanzibar dominions ostensibly 'against the importation of arms and the exportation of slaves.' In a despatch from the Foreign Office, dated November 1st, Colonel Euan-Smith was informed 'that Her Majesty's Government had agreed with that of Germany, in view of the rebellion against his (the Sultan's) authority which had broken out on the mainland under the influence of the slave-dealers, to establish, in conjunction with his Highness, a block-

ade over the coast of his continental dominions, in order to cut off the importation of munitions of war to his insurgent subjects, and to put a stop to the exportation of slaves.' This diplomatic phraseology, however, obscured the main object of the blockade as well as the causes which gave rise to it. The rebellion had broken out, not against the authority of the Sultan, but against that of the German Company, and had no connection—indeed had not before been alleged to have any connection—with the business of the slave-dealers. Nor, indeed, from the antecedent attitude of German subjects on the mainland (between whom and their Government natives could not be expected to distinguish) towards slavery and the slave trade was there any reason for the slave-dealers to apprehend much interference with their special traffic as a consequence of the establishment of German administration.'"<sup>94</sup>

Even before the states of Europe had formally recognized the illegality of slavery itself, they had given evidence, by their practice of granting asylum to fugitive slaves, that they did in reality so regard it.

The Act of Brussels, relative to the African Slave Trade, was signed July 2, 1890, by the representatives of the principal powers and the states most concerned in the slave trade. The preamble declared the purpose of the stipulations of the convention as follows:

"Equally animated by the firm intention of putting an end to the crimes and devastations engendered by the traffic in African slaves, of effectively protecting the aboriginal populations of Africa, and of assuring

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<sup>94</sup>British East Africa, or Ibea, A History of the Formation and Work of The Imperial British East Africa Company, compiled with the authority of the directors from official documents and the records of the company, by P. L. McDermott, London, 1893, p. 17-8.

to that vast continent the benefits of peace and civilization;

“Wishing to give a fresh sanction to the decisions already taken in the same sense and at different periods by the powers; to complete the results obtained by them; and to draw up a collection of measures guaranteeing the accomplishment of the work which is the object of their common solicitude;..”

In one hundred articles, provision is made for carrying out these humanitarian aims of the signatory powers.

This important convention has been of great service in facilitating the coöperative action of the powers in putting an end to the ancient and accursed traffic in slaves.<sup>95</sup>

#### § 8(f). HUMANITARIAN ASYLUM<sup>96</sup>

##### FUGITIVE SLAVES

The illegality of the institution of slavery under international law has not been recognized as clearly as has the illegality of the slave trade. All the great and all the civilized states have, it is true, abolished slavery from their territory until it is now at last restricted to

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<sup>95</sup>In the case of the Kongo, discussed above, the articles of the Brussels Act were appealed to in order to protect the aborigines.

Phillimore (Commentaries, vol. I, Part III, ch. XVII) has an interesting account of slavery and the slave trade.

<sup>96</sup>We have departed somewhat from the rigid logic of our classification to adopt a designation which cannot be considered as a purpose to justify intervention at all. For asylum is one of the means of carrying out humanitarian intervention. Nevertheless, in practice, the asylum which is afforded in legations and warships has generally been restricted to escaped slaves and political refugees, so that we might have written out our title “as humanitarian intervention for the protection of escaped slaves and political refugees.”



Turkey, Persia, and a few minor Mohammedan States; but slavery of itself has not even yet been formally declared to be contrary to international law. It is still tolerated in those backward countries either because it would not be for the best interests of the population, including the slaves, to eliminate it forthwith, or because the powers have been deterred from extirpating it by the expense, or by the political consequences of the reform. Nevertheless, we may safely affirm that slavery to-day is contrary to international law, and a justifiable ground for humanitarian intervention, whenever the powers are assured that such action is practicable.<sup>97</sup>

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<sup>97</sup>Creasy, discussing the report of the Royal Commission on Fugitive Slaves, quotes with approval the opinion of Sir George Campbell that "the time has come when this country may fairly say we will under no circumstances aid in the enforcement of slavery, we will have nothing to do with this nefarious and accursed thing," and adds: "Let it always be remembered that the institution of slavery is contrary to the first principles of general public law, as taught by the greatest founders and expounders of jurisprudence. I refer to the maxims of the great masters of the Golden Age of Roman Law, that slavery is contrary to Natural Law; that by Natural Law all men are free and equal, but that slavery was introduced as a general institution by the practice of nations. Slavery existed for the reason given by Grotius for the temporary existence of much International Law, '*quia placuit gentibus*' [because it pleased the nations]. But now we may say with honest pride that '*displicet gentibus*' [it displeases the nations]. We may not be justified in using penal or coercive measures towards the miserable minority that yet adhere to it; but we are fully justified in declining to be their bailiffs or accomplices. The evidence collected by this Royal Commission shows conclusively the strong, the growing sentiments of civilized States that slavery is no longer to be upheld or enforced; that when a slave gains access to a free country 'the air makes free,' and that the public ships of civilized nations will not give back the fugitive slave, who once has gained the shelter of the free flag, to punishment or to bondage.

"There is no need to prepare new forms of reply if demands for the surrender of such fugitives should again be

Although the great states have not intervened with force of arms to put an end to slavery, they have had recourse to a limited, we might say a negative form of intervention which has consisted in granting to fugitive slaves an asylum on their warships.

More than two centuries ago, we find isolated instances of such asylum, which were then, strictly speaking, violations of the law of nations, although they were morally justifiable as protests against a law out of harmony with the humane sentiments professed by all civilized states.

Richard Hill, envoy to the Duke of Savoy, in a letter from Genoa, dated January 10, 1705, writes: "Sir, it is a great mortification to me, and to all the Queen's officers here, to see one of the Queen's subjects, and a warrant officer in the fleet, in chains in the Duke of Tursis's galleys. This poor man was gunner of the *Newport*, and being deluded and invited into a galley, was chained to an oar, and being treated like a slave, because one of the Duke of Tursis's slaves had deserted, and saved himself aboard one of the Queen's ships. I have been negotiating this poor man's liberty ever since I am here, but as yet without success." (Correspondence of Richard Hill, ed. by W. Blackley, Lon-

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made. We may appeal to and may adopt the noble words of our old sea-hero, Lord St. Vincent, when the Lords of the Admiralty in 1798 forwarded to him the complaints of some foreign slave-owners, whose slaves had obtained refuge on board of British men-of-war in the port of Malta, which then was foreign territory. Lord St. Vincent told the British Admiralty, 'that from the days of the renowned Blake to this hour it has been the pride and glory of the officers of His Majesty's navy to give freedom to slaves wherever they carried the British flag; and God forbid that such a Divine maxim should fade under me.' " (Quoted in report on Fugitive Slaves, appendix, p. 224, Creasy: First Platform of International Law, p. 696-7.)

don, 1845, Vol. II, p. 676-7.) It appears from the correspondence that the fugitive slave above referred to was treated as a deserter, and at the first port touched at was given his liberty and a passport to go whither he wished.

In the course of time, the slave trade was abolished, and the great states either directed their officers to grant fugitive slaves an asylum, or authorized them to use their discretion. Sir George Campbell was correct in his statement, made in 1876, that the granting of asylum was in conformity with "the great majority and weight of opinion of the most important countries."<sup>98</sup>

In 1876, public opinion was deeply stirred to learn that the instructions issued to naval officers authorized them, when in foreign ports of slave holding states, to deliver over to the local authorities slaves who had sought an asylum under the British flag. The consequence was that Disraeli's Government appointed a remarkable commission of statesmen and jurists to investigate and report upon the matter.

This Royal Commission on Fugitive Slaves, in the course of their report, stated: "It may, we conceive, be safely affirmed that a ship of war entering the waters of a friendly state is by the common practice of nations regarded as exempt, speaking generally, from the jurisdiction of the local authorities, and is at the same time under an international obligation, speaking generally, to respect the local law.

"We are unable, however, to report that the extent of the immunity on the one hand, or the limits of the obligation on the other, have been so clearly and com-

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<sup>98</sup>See dissenting opinion, Sir George Campbell, Royal Commission's Report on Fugitive Slaves, which we have given in the preceding note.

pletely settled by international usage that they can be stated with absolute confidence and precision. There is room for a difference of opinion with respect to them, and such a difference of opinion exists. In like manner, with reference to the principles of international law applicable to the reception of fugitive slaves, a difference of opinion exists, . . . ”

In view of this difference of opinion, the commission considered it best “to refrain from attempting a definition.” Instead they concurred in certain recommendations and they expressed their belief that if these recommendations were adopted” the measures necessary for giving effect to them would not afford reasonable cause of complaint to foreign countries.”

The report then discusses the practice of other nations with reference to the reception of fugitive slaves. Portugal and Holland surrendered them; Italy and Germany apparently did not; while the Secretary of the Navy of the United States gave as his opinion “that at present, no officer would for a moment think of giving up a slave who had taken refuge on board his vessel in order that he might return to his condition of slavery.”

The French and Russian officers were allowed a wide discretion and responsibility. From evidence laid before the Commission, it appeared “that in former years Britain’s naval officers deemed themselves entitled to exercise a wide discretion with reference to cases of slaves seeking refuge on board their ships.” Of late years, the Commission found that this discretion had been limited, but that the instructions issued had “materially varied in character.”

Coming to the main point, that is, “in what cases a slave ought to be retained on board a ship,” the Commission reported: “Naval officers should be instructed

that although ships of the Royal Navy should not be made a general asylum for fugitive slaves, they are not debarred from using their own discretion in retaining such fugitives on board and affording them protection on the principles which we shall proceed to recommend for their guidance.”

“In the exercise of this discretion, the officer should be guided, before all things, by considerations of humanity. Whenever in his judgment humanity requires that the fugitive should be retained on board, as in cases where the slave has been, or is in danger of being cruelly used,—he should retain such fugitive.”

The fourth of the recommendations which the Commission made in the belief they would indicate “the best course to promote the humane and enlightened policy” which Great Britain had “consistently pursued” with a view to the mitigation and eventual abolition of slavery is a repetition of what has been quoted: “In dealing with this question, the officer should be guided, before all things by considerations of humanity. Whenever, in his judgment, humanity requires that the slave should be retained on board,—as in cases where the slave has been, or is in danger of being cruelly used,—the officer should retain him. In other cases he should do so only where special reasons exist.” (Parliamentary Papers, 1876, vol. 28, Report of the Royal Commission on Fugitive Slaves [c.-1516] p. XVIII.)

In the other recommendations of the Commission there is evident the same humanitarian purpose, and the same evident intention to authorize the naval officer to intervene to the extent of affording an asylum when necessary to protect the fugitive slave from inhumane treatment.

On the other hand, the report states: “Naval officers should understand that, whilst entrusting them with this discretion, their government does not claim a right

to interfere actively with the institutions of slavery in countries where it is upheld by the local law..." and in another place the Commission emphasized the inconvenience which would result from such an attempt, and they consider that "...it must always be remembered that states within whose territories slavery continues to exist can refuse to admit British ships of war into their ports and waters, should they deem this extreme measure necessary to the protection of national or private interests."\*

The distinguished group of jurists who signed the Report on Fugitive Slaves recommending that the British officers should be authorized to offer an asylum when necessary to prevent the cruel treatment of the fugitive slave believed apparently that the granting of this asylum would be a violation of "the theory of international law." But like practical Englishmen, they threw over their theory when it proved embarrassing.

If the Commission were right in adhering to the theory of the perfect right of every state to do as it

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\*This was in conformity with the above-quoted views of the majority of the Commission relative to the status of public vessels in foreign ports.

The fifth recommendation of the report reads as follows:

"5. Respect for the local law ought not, however, to be carried to such an extent as to make British naval officers accessory to acts of cruelty; and in cases in which they have reason to believe that such acts have been, or, unless protection is afforded him, probably will be, practiced upon a slave found on board their ships, or asking permission to come on board, they ought to be authorized to afford protection to the slave, although such conduct may be opposed to the theory of international law. A rigid adherence to that theory by the commanding officers of British ships in foreign territorial waters, in all cases whatever, would be neither practicable nor desirable."

deemed best within its own territory, then Lord Chief Justice Cockburn, a member of the Commission, was consistent in refuting the conclusion that the "harboring" of a slave "was not a violation of the local law,"<sup>2</sup> and we can sympathize with the separate opinion expressed by six distinguished members of the Commission,<sup>3</sup> that Great Britain had "no right to force its own laws on an independent state, nor (except in such extreme cases as those hereinafter referred to) to authorize its subjects to violate the law of the latter because it disapproves of that law..."

Following out consistently the theory that each sovereign state was supreme within its jurisdiction, they were logical in considering that "although slavery had happily become abhorrent to the British nation, and has been abolished in British territories, yet the rights conferred upon the owners of slaves by the laws of their own countries have been, on more than one occasion since the abolition of slavery by this country, recognized and enforced by English courts of justice. Upon this fact, as well as upon the principles of international law, we think that the commanding officers of British ships of war, in foreign territorial waters would do wrong if they afforded protection to all slaves indiscriminately who might be found on board their ships."

But in the conclusion which they reach, and in the recommendation with which they concur the Commissioners desert logic, and declare that "a rigid adherence to that theory by the commanding officers of British ships in foreign territorial waters, in all cases what-

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<sup>2</sup>See separate opinion filed by the Lord Chief Justice and printed with the report.

<sup>3</sup>A. E. Cockburn, T. D. Archibald, Alfred Hy. Thesiger, H. T. Holland, J. F. Stephen, H. C. Rothery.



ever, would be neither practicable nor desirable.” (5th Recommendation, quoted in the preceding note.) It would seem that a theory of international law, the observance of which in so important a matter was neither practicable nor desirable, should be modified and be made to recognize that humanitarian intervention is a just ground for overriding local regulations when the latter are not in conformity with those principles of justice which are recognized and enforced by all the civilized states.

Sir Robert Phillimore, Professor Mountague Bernard, and Sir Henry S. Maine, three international jurists of high repute, who were members of the Royal Commission on Fugitive Slaves, did not adopt the reasoning of the Commission, although they signed the report and joined in approving the recommendations which it contained. They filed a separate opinion expressing their conviction that the officer who gave an asylum to a fugitive slave would not violate international law, nor the local law to which he could not be considered as subjected. The importance of this opinion justifies us in laying it before the reader:

“We should have been content to sign the report without expressing any opinion, beyond what is contained in it, on the first question. But since it has been thought right that opinions should be expressed on that point, we will state the considerations which in our view justify, so far as international law is concerned, the conclusions of the report, confining ourselves to such considerations, and not entering into a detailed examination of precedents or authorities.

“At the same time, we think that a careful and discriminating examination of such authorities would support the views we are about to express.

“The question is substantially this: what instructions the government may, without doing violence to any international obligation, give to its officers respecting the reception of fugitive slaves in foreign waters?

“[I.] It is true, as a general proposition, that a naval officer, entering with the ship under his command the waters of a friendly state, ought to respect the local laws, and to refrain from lending his assistance to any violation of them. It is right that he should receive instructions to this effect, and such instructions British officers now receive. They are directed by the Queen’s Regulations to ‘cause all those under their orders to show due deference to the established rights, ceremonies, customs, and regulations’ of the places they have occasion to visit; and they are prohibited in general from receiving on board, whilst lying in the ports of a foreign country, persons who may seek refuge for the purpose of evading the local laws to which such persons may have become amenable.

“The foregoing proposition, however, is only a general expression of what, in given circumstances, one maritime state may fairly and reasonably expect at the hands of another; and it would be an error to regard it as a canon of international law, absolute, inflexible, and admitting no qualification. It admits, and indeed requires, at least one material qualification. Where the execution of the local law would be plainly repugnant to humanity or justice, the sovereign with whose commission the ship sails cannot reasonably be held bound to instruct his officers to enforce the law, or permit it to be enforced, on board of her. He may rightly instruct them not to enforce it there, and not to permit it to be enforced.”

“It is a general assumption, on which governments must habitually act, that the laws of civilized states, framed to secure public order and private rights, will

not so operate as to be in conflict with humanity or justice. But this general assumption must and does sometimes give way, whether from the necessary imperfection of human laws, or from particular defects which cannot be immediately removed in the institutions of particular states, or from real differences of national sentiment as to what is humane or just—differences which the progress of civilization, tending though it does continually to produce a general uniformity, has not yet entirely effaced. In cases of this kind,—which though exceptional, are by no means rare—it is not a sufficient answer to point to the local law and to the sovereign authority which enacted it. Where British subjects are interested, this country deems it no infringement of an international obligation to insist, against the local law, on its own view of what justice or humanity demands, and even, if need be, to exact redress by force. Where no British interest is involved, the British Government has the right to say at least that the authority delegated by it to its officers shall not be used to do what is plainly inhuman or unjust.

“This qualification of the general rule is demanded by the national self-respect of every state which commissions a ship of war; and it is consistent with the ordinary principles on which the intercourse of civilized states proceeds.

“That there is no unqualified obligation to assist or permit on board a ship of war the enforcement of the local law is assumed in the instructions which British naval officers receive with regard to political refugees, and has been assumed in the cases where, before the issue of those instructions, the refusal to give up a refugee has been approved by the British Government. A political refugee may be an object of partisan rancor and passion; but he is also commonly a criminal in

the eye of the local law, the administration of which is in the hands of a government inimical to him.

“Laws which uphold slavery are local not only in the sense that they have legal force in particular countries, but in the further sense that they create a status not recognized in other countries. The right to own a slave as property in a slave-holding country may be recognized elsewhere, and it has been recognized in English courts of justice; but the right to compel the obedience of a slave cannot be enforced in any place where slavery is not legal. But this is far from being the whole account of the matter, though it may perhaps be all that a court of law could properly take notice of. The state, in judging what instructions (as between itself and other states) it may rightly give to its officers, is not confined to the considerations which might be urged before a court of law. Slavery is not only an institution of this strictly local character, but, so far as it operates to keep human beings forcibly and against their will in the condition of mere objects of property, is regarded by nearly the whole of Christendom as repugnant to justice. In Brazil and Cuba it survives only because the total and immediate abolition of it—involving, as this would, the destruction of a large mass of proprietary rights—has not hitherto been found practicable. The deliberate conviction of Great Britain on the subject has been shown in many ways, by her legislation, by the sacrifices she has undergone, by the uniform and unremitting exertions of her Government. It is an institution also which, from its nature, cannot by any restraints of law or custom be so regulated and controlled as to prevent it from sometimes operating in ways repugnant to humanity, and that not alone by the infliction of mere bodily suffering.

“International law, it is to be observed, is not stationary; it admits of progressive improvement, though the improvement is more difficult and slower than that of municipal law, and though the agencies by which change is effected are different. It varies with the progress of opinion and the growth of usage; and there is no subject on which so great a change of opinion has taken place as slavery and the slave trade. Bynkershoek, in one of his latest works, published in 1737, maintains that, as a conqueror may in the exercise of an extreme right do what he pleases with his captive, he may, though the practice has fallen into desuetude, put him to death, or, as a consequence of that right, may sell him into slavery. (*Quaest, Juris Publici*, Bk. i. c. 3.) Such a doctrine would now be held not merely unlawful, but atrocious; and the trade in negro slaves, which was formerly competed for as a legitimate source of profit, has in a great number of treaties been assimilated to the crime of piracy.

“These considerations are sufficient to justify Great Britain in instructing her officers not to enforce slave laws, or permit them to be enforced, on board her ships of war in foreign territorial waters, either altogether or in particular circumstances in which the claims of humanity or justice assert themselves more plainly and imperatively than in others. Which of these two courses she should adopt may be a question of prudence, and perhaps also of humanity itself; but we do not think it can be solved by reference to a positive rule of international law. Against either of them slaveholding states have, as is pointed out in the report, an extreme remedy in the power of excluding British vessels from their ports. But in exerting that power, should they deem it necessary to do so, they would be protecting themselves or their subjects, not against

a violation of international law, for there would be none, but only against apprehended loss.

“It is difficult, no doubt, in practice, to draw with theoretical precision the line of demarcation between an active interference with slavery and the refusal to enforce the master’s right over his slave. An officer who declines to give up a fugitive does to some extent interfere with the local institution of slavery. He not only protects from injury, but takes away from the slave-owner, the terrified man or helpless girl who by the local law is a marketable object of property; and it makes little practical difference—to the owner none—whether the slave has scrambled on board with the officer’s leave or without it. But in these cases it may fairly be said that he interferes no more than he inevitably must unless he is to be actively instrumental in forcing the fugitive back into slavery; if he were to go further, to incite slaves to escape, hold out to them inducements to do so, or use force or contrivance to liberate them, this would be an interference of a different kind. In the Recommendations of the Report this distinction is kept in view, and an officer who should be careful to observe it would find little difficulty in doing so.”

Turning next to a careful consideration of the juridical situation of public vessels in foreign ports, the separate statement of opinion concludes as follows:<sup>4</sup>

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<sup>4</sup>[We have omitted from the text Section II of this separate statement of opinion which deals with the so-called extra-territorial rights of public vessels in foreign ports, but we include it in this footnote because of its juridical value.]

“II. In the foregoing remarks it has been assumed,—

“1. That a commanding officer on board his ship, even when she is lying within the territorial waters of a foreign State, is to be regarded, not as in subjection to the authority and laws of that state, but exclusively as a subject of his own Sovereign and an officer of his own government.

“[III.] In conclusion, we are of opinion that Her Majesty’s Government may, without transgressing any international obligation, give such instructions to officers commanding Her Majesty’s ships with respect to the disposal of fugitive slaves who may seek refuge on board their vessels as the Government may judge most consonant to humanity and prudence.

“Officers acting on such instructions would be responsible to the authority from which they received their orders, and would not be responsible to the foreign territorial authority.

“Her Majesty’s Government could not deny to any foreign Sovereign the right to interdict the entrance of

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“2. That the laws of the foreign State cannot be forcibly executed on board unless by his order or permission as commanding officer.

“It is necessary to say a few words on these two assumptions, and in doing so to advert to the distinction between a ship owned by private persons and employed by them for purposes of trade or pleasure, and a ship commissioned by the State and employed in the public service.

“A private vessel is not, according to the present practice of States, what a ship has been called by a great authority (Lord Stowell) ‘a mere moveable.’ She is also a floating habitation, subject to the law and jurisdiction of the State under whose flag she sails,—a jurisdiction which covers all persons on board, of whatever nationality, enjoying the protection of the flag, which follows her everywhere, and is not interrupted even when she is in the territorial waters of a foreign Power.<sup>a</sup> According to French authorities and French practice, this jurisdiction is treated as exclusive in all such matters as do not affect the rights of persons not belonging to the ship, nor the peace and order of the port. But in all other matters, if not in these, it is universally admitted that the ship and all on board of her are amenable to the law of the country in whose waters she happens to be, although the question may arise (as it has lately arisen) whether that law ought to be held enforceable in the case of vessels navigating within the range of coast-water and not lying in port.

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<sup>a</sup>Reg. v. Sattler, D. and B. C. C. 525; Reg. v. Anderson, 1 C. C. R. Law Rep., 161.



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<sup>a</sup>Reg. v. Sattler, D. and B. C. C. 525; Reg. v. Anderson, 1 C. C. R. Law Rep., 161.

slaves. The case of John Anderson is an example of this form of humanitarian intervention.

“In September, 1853, John Anderson, a negro slave, born in the United States, ran away from his master. About three weeks later, he met and spoke to a planter named Diggs, who recognized him. Anderson asked Diggs where Charles Givens lived, saying he belonged to M'Donald, and wanted Givens to buy him that he

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pedient or not, it is certainly different from the understanding which we believe to exist universally at present, and on which naval officers and their Governments have thought themselves entitled to rely.

“This suggestion has been urged by two Italian jurists, Lampredi and Azuni. ‘A nation,’ says the former, ‘which resolves to act vigorously will not make the least difference between a merchant vessel and a ship of war, whenever long custom or a privilege accorded has not established the contrary, and thus set a limit to the exercise of its sovereign rights.’<sup>c</sup> But he admits himself to be in opposition to many writers, and his opinion does not appear to be shared by the present Italian Government.<sup>d</sup>

“Lampredi, in the chapter referred to, asserts the positions that a ship at sea is to be regarded as a mere vehicle (*vettura per mare*), and two ships meeting one another at sea as vehicles meeting in an unoccupied desert; and hence that the persons on board are not protected by the flag, but solely as individuals by the law of nature, which makes every man free and independent except in regard to his legitimate Sovereign. It is evident that according to these positions a slave, a refugee, a person liable to conscription or impressment, or any other subject, might be forcibly taken out of a foreign ship by the Power claiming him not only in territorial waters but on the high seas.

“A like limitation of the privilege is favored by Pinheiro-Ferreira. But this author, an avowed theorist, maintains also (in his Annotations on Martens) that ambassadors should be deemed liable to criminal and civil process. It has some support likewise in a *dictum* of Mr. Justice Best in ‘Forbes v. Cochrane,’ and in the far greater authority of Lord Stowell.<sup>e</sup>

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<sup>c</sup>Del Commercio dei Popoli Neutrali in Tempo di Guerra, ch. x (published in 1788).

<sup>d</sup>Letter of the Italian Minister of Foreign Affairs in appendix [of the Report of the commission].

<sup>e</sup>Letter in Appendix [of the Report of the commission].

might be near his wife. Diggs charged him with being a runaway slave, and refused to let him go. The law of Missouri declared that any slave found more than twenty miles from his home should be deemed a runaway, and that any person might apprehend a negro being, or suspected of being, a runaway; and it provided a reward for so doing. Diggs, however, told Anderson to come and get his dinner, and he would then

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It must be observed, however, that that whole subject of the national sovereignty over ships has undergone much discussion, not only since Lampredi but since the time of Lord Stowell; and that the effect of those discussions has been to carry the jurisdiction of a State over vessels entitled to use its flag to a more advanced point, and place it on a firmer basis, than it had reached in 1820.

“It may be that should the extent of the privilege ever become a question in courts of law, some qualifications of it might be allowed, the necessity or expediency of which there has not hitherto been occasion to consider. A concurrent jurisdiction might be held to exist for some purposes, as in matters of civil status. Courts of law are accustomed, in dealing with such questions, to proceed very much, as speculative writers do, on considerations of general convenience; and some questions might easily be suggested as to which it would be hazardous to predict what answer they would receive. But the matter referred to this Commission is one upon which any decisions that could be pronounced by courts of law could have but an indirect bearing. As between State and State, the right which every naval commander in foreign waters has hitherto believed himself to possess of saying, ‘My ship is the castle of my sovereign under my command; no one enters it, and no force can be exerted in it, unless by my permission; and for the orders I give here I am not amenable to any foreign jurisdiction,’ appears to us to be sustained by usage and opinion, and, we may add, by convenience. The privilege of the ship is the privilege of the Power whose flag she displays and in whose service she is employed. And the responsibilities of the officer who in foreign waters acts in obedience to instructions, to the detriment (should this be so) of the foreign country or any of its people are assumed, and would be wholly borne, by the Government which instructed him.”

go with him to Givens. On the way, Anderson tried to make his escape, and Diggs then called to four negroes who were with him to give chase, saying they should have the reward. Anderson, being overtaken, drew a knife, threatening to kill any one who touched him. The negroes kept off, but Diggs struck at him with a stick, which caught in a bush and broke, and then Anderson stabbed him in the breast. Diggs, turning to flee, caught his foot in a tree and fell, and Anderson then stabbed him in the back, and after being chased a short distance by the negroes, succeeded in making his escape to Canada. Diggs shortly after died of his wounds. Anderson lived unmolested in Canada until 1860, when he was recognized, and was arrested on the application of the officers of the State of Missouri.” (Sir Edward Clarke: *The Law of Extradition*, 3 ed., London, 1888, p. 95 to 96.)

When the case came to trial on a habeas corpus the chief justice held that the fact that, if acquitted, Anderson would be returned to slavery, was not material (*Ibid*, p. 97). The prisoner was later released by the courts chiefly on technical grounds. (See J. B. Moore: *Extradition*, Vol. 1, p. 642.)

In the meantime, however, “the case had created much excitement in England, and the Secretary for the Colonies addressed a dispatch to the Governor of Canada, instructing him not to issue his warrant for the extradition of Anderson, even if the judgment of the Queen’s Bench were upheld on appeal. Her Majesty’s Government, he said, were not satisfied that the decision of the Court at Toronto was in conformity with the views of the treaty which had hitherto guided the authorities in this country; and they desired an opportunity of further considering the question, and, if possible, of conferring with the Government of the United States upon the subject.” (Clarke, *Ibid*, p. 98.)

Clarke in a footnote (Ibid, p. 217) remarks: “.... The crime charged against him [Anderson] upon the facts stated was murder by the law of England as well as by that of the United States. The question whether the circumstances showed sufficient provocation to reduce it to manslaughter, was one for the jury, and one with which the Canadian courts had nothing to do. Nor had these courts any right to inquire into the justice or policy of the legislative enactment under which the arrest was attempted to be made. That was a matter for the consideration of the foreign country, and could not, however it was resolved, affect the nature of the crime. An illustration may be given in the English Act, 14 & 15 Vict., cap. 19, by which if three poachers are out together at night armed, any person is authorized to apprehend them. It is very probable that American judges would disapprove of that Act, as part of what they might consider an iniquitous system of game laws; but, so long as it remains upon the English Statute-book, a poacher killing a person so attempting to apprehend him would unquestionably be guilty of murder, and England would have an indisputable right to claim him under the treaty. So far as this question was decided in the case of Anderson, it was decided rightly. This was in the decision of the Queen’s Bench (Canada) in favor of the surrender, ante, p. 95. See also *Reg. v. Sattler*, 1 Dears and Bell, C. C., 525.”

This principle, to which Sir Edward Clarke refers, applies only in a case like that of the poachers in which the legislation in question may be considered as a reasonable exercise of the Sovereign powers of the state. In the case of slavery, however, this is not the case, for slavery being contrary to international law, not only is no state obligated to help another state to enforce it, but it is in duty bound to intervene within reason by affording a refuge to the escaped slave.

Justice M'Lean of the Canadian Court of Queen's Bench was correct in the view he expressed in his dissenting opinion that "as the law of Canada did not recognize slavery, Anderson could not be held to have committed murder in resisting unlawful detention." (Clarke: Extradition, 3 ed., p. 98.)<sup>1</sup>

The relations between the United States and Great

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<sup>1</sup>Professor Moore discussing the question of the condition of the fugitive as a ground for refusing extradition, says: "This question frequently arose under the treaty of 1842, during the existence of slavery in the United States. Prior to the conclusion of that treaty, when at various periods the surrender of fugitive criminals was granted as an act of comity by Canada and by some of the States of the United States, the Canadian Government refused to recognize offences which grew out of the relation of master and slave. Thus, on July 21, 1829, Mr. Van Buren, then Secretary of State, wrote to Mr. Vaughan, British minister, stating that the governor of Illinois had transmitted evidence that one Paul Vallard had stolen a female mulatto slave and fled to Canada. Mr. Van Buren, while saying that he was aware that there was no ground in public law for a formal application, requested Mr. Vaughan to employ his good offices. Subsequently Mr. Vaughan replied, enclosing an extract from a report of the executive council of Lower Canada, which was as follows: 'In former cases the committee have acted upon the principle, which now seems to be generally understood, that, whenever a crime has been committed, and the perpetrator is punishable according to the *lex loci* [law of the locality] of the country in which it was committed, the country in which he is found may rightfully aid the police of the country against which the crime was committed in bringing the criminal to justice; and, upon this ground, have recommended that fugitives from the United States should be delivered up.' But (the report concluded) the offence must be one of those *mala in se*, universally admitted to be crimes in every nation. Canada did not recognize slavery. She did not admit that property could be had in a human being, and consequently could not give Vallard up, even if he were in Canada, which did not appear." (J. B. Moore: Extradition, Vol. 1, § 440, p. 671-2. Professor Moore refers to MSS. Notes, British Legation, Vol. 15. The case of John Anderson is discussed, Ibid, p. 672-4, and referred to, Ibid, pp. 637, 642, 647, 677.)



Britain were troubled from time to time by the refusal of the latter to extradite or to punish slaves who had mutinied against the officers of American vessels transporting them, and taken refuge in the Bahamas or other British ports.

We take verbatim the following concise statement of the case of the *Creole* from the account given in Stowell and Munro's Cases\*:

In the course of the thirties in a number of instances (*The Comet, Encomium, Enterprise, and Hermosa*), when American vessels transporting slaves from one American port to another were driven by stress of weather or other accident to take refuge in British ports, the local authorities had liberated their human cargo in spite of the vigorous protests of the American Consuls. Because of this action the United States made vigorous protests to the British Government without receiving the redress it claimed.

In 1840 the Senate adopted a resolution declaring that, where a vessel on the high seas, in time of peace, engaged in a lawful voyage, was forced by stress of weather or other unavoidable circumstances into the port of a friendly power, the country to which she belonged lost "none of the rights appertaining to her on the high seas, either over the vessel or the personal relations of those on board."

The excitement created by these incidents culminated in the case of the brig *Creole*, which sailed from Hampton Roads for New Orleans on the 27th of October, 1841, having on board one hundred and thirty-five slaves. On the night of the 7th of November a portion of the slaves revolted, wounded the master, chief mate,

\*Copied verbatim from Stowell and Munro: *International Cases*, vol. I, p. 249-253. The account there given is based upon the documents given by Professor J. B. Moore (*Digest of International Law*, vol. II, p. 350-361). We have omitted quotation marks in order to avoid confusion.

and two of the crew, and murdered one of the passengers, and having secured possession of the vessel, ordered the mate, under pain of death, to steer for Nassau, where the brig arrived on the 9th of November. The slaves were afterwards liberated, under circumstances disclosed below in the opinion of Mr. Bates, umpire of the mixed commission under the treaty between the United States and Great Britain of 1853, to which commission the cases of the *Enterprise*, *Hermosa*, and *Creole* were ultimately submitted, on claims for damages.

In the cases of the *Comet* and *Encomium*, which respectively occurred in 1831 and February, 1833, Great Britain in the latter part of President Van Buren's Administration paid an indemnity of \$116,179.62. But in the cases of the *Enterprise*, *Hermosa*, and *Creole*, which occurred after August 1, 1834, when the act of Parliament of August 28, 1833, for the abolition of slavery in the British colonies took effect, the British Government refused to acknowledge any liability on the ground that the slaves on entering British jurisdiction became free. The United States, on the other hand, maintained that if a vessel were driven by necessity to enter the port of another nation the local law could not operate so as to effect existing rights of property as between persons on board, or their personal obligations or relations under the law of the country to which the vessel belonged. In the case of the *Creole* this argument was emphasized by the fact that the vessel was brought into British jurisdiction by means of a crime against the law of the flag. The case gave rise to animated discussions in the British Parliament as well as in the Congress of the United States, and came near breaking up the negotiations between Mr. Webster and Lord Ashburton in 1842.

Bates, umpire in the case of the *Creole* under the convention between the United States and Great Britain of February 8, 1853, rendered the following opinion:<sup>1</sup>

"This case having been submitted to the umpire for his decision, he hereby reports that the claim has grown out of the following circumstances:

"The American brig *Creole*, Captain Ensor, sailed from Hampton Roads, in the State of Virginia, on the 27th October, 1841, having on board one hundred and thirty-five slaves, bound for New Orleans. On the 7th

<sup>1</sup>Notwithstanding the deservedly high authority of Umpire Bates, we must question the correctness of the decision which he reached in this case. The defect in his reasoning was due to his failure to recognize that slavery was contrary to the law of nations. Holding a different opinion, as we have just seen, Umpire Bates declared that "...slavery, however odious and contrary to the principles of justice and humanity, may be established by law in any country; and, having been so established in many countries, it cannot be contrary to the law of nations."

Clarke, discussing this case, remarks: "The law authorities in England were unanimously of opinion upon this case that they [the slaves] could not be given up in the absence of an Act of the English Parliament giving power to the executive.

"For this reason the extradition clause of the Ashburton treaty, which has already been quoted, while it took immediate effect in America and Canada, did not come into operation in England until August, 1843, when the Act 6 and 7 Vict., c. 76, was passed. Some objection was made to this Act in the House of Commons, where fears were expressed that advantage might be taken of the treaty to get back fugitive slaves on pretended charges of robbery. The Attorney-General (Sir F. Pollock), being appealed to on the subject, said that, upon a charge of crime being made against a fugitive, his personal status in the country from which he had fled would be wholly immaterial." (Sir Edward Clarke: *The Law of Extradition*, 3 ed., 1888, p. 125.)

This refusal of the amendment to exclude slaves from the operation of the act might perhaps be considered as a legislative interpretation of the law of nations, in which event, it might have been expected to have some influence in fixing the responsibility of the British Government in the case of the *Creole*.

November, at nine o'clock in the evening, a portion of the slaves rose against the officers, crew, and passengers, wounding severely the captain, the chief mate, and two of the crew, and murdering one of the passengers; the mutineers, having got complete possession of the vessel, ordered the mate, under threat of instant death should he disobey or deceive them, to steer for Nassau, in the island of New Providence, where the brig arrived on the 9th November, 1841.

“The American Consul was apprised of the situation of the vessel, and requested the governor to take measures to prevent the escape of the slaves, and to have the murderers secured. The consul received reply from the Governor, stating that under the circumstances he would comply with the request.

“The consul went on board the brig, placed the mate in command in place of the disabled master, and found the slaves all quiet.

“About noon twenty African soldiers, with an African sergeant and corporal, commanded by a white officer, came on board. The officer was introduced by the consul to the mate as commanding officer of the vessel.

“The consul, on returning to the shore, was summoned to attend the governor and council, who were in session, who informed the consul that they had come to the following decision:

“ ‘1st. That the courts of law have no jurisdiction over the alleged offenses.

“ ‘2d. That, as an information had been lodged before the governor, charging that the crime of murder had been committed on board said vessel while on the high seas, it was expedient that the parties, implicated in so grave a charge, should not be allowed to go at large, and that an investi-

gation ought therefore to be made into the charges, and examinations taken on oath; when, if it should appear that the original information was correct, and that a murder had actually been committed, that all parties implicated in such crime, or other acts of violence, should be detained here until reference could be made to the Secretary of State to ascertain whether the parties should be delivered over to the United States Government; if not, how otherwise to dispose of them.

“ ‘3d. That as soon as such examinations should be taken, all persons on board the *Creole*, not implicated in any of the offenses alleged to have been committed on board the vessel, must be released from further restraint.’

“Then two magistrates were sent on board. The American Consul went also. The examination was commenced on Tuesday, the 9th, and was continued on Wednesday, the 10th, and then postponed until Friday, on account of the illness of Captain Ensor. On Friday morning it was abruptly, and without any explanation, terminated.

“On the same day, a large number of boats assembled near the *Creole*, filled with colored persons armed with bludgeons. They were under the immediate command of the pilot, who took the vessel into the port, who was an officer of the government, and a colored man. A sloop or larger launch was also towed from the shore and anchored near the brig. The sloop was filled with men armed with clubs, and clubs were passed from her to the persons in the boats. A vast concourse of people were collected on shore opposite the brig.

“During the whole time the officers of the government were on board they encouraged the insubordination of the slaves.

“The Americans in port determined to unite and furnish the necessary aid to forward the vessel and negroes to New Orleans. The Consul and the officers and crews of two other American vessels had, in fact, united with the officers, men, and passengers of the *Creole* to effect this. They were to conduct her first to Indian Quay, Florida, where there was a vessel of war of the United States.

“On Friday morning, the consul was informed that attempts would be made to liberate the slaves by force, and from the mate he received information of the threatening state of things. The result was, that the attorney-general and other officers went on board the *Creole*. The slaves, identified as on board the vessel concerned in the mutiny, were sent on shore, and the residue of the slaves were called on deck by direction of the attorney-general, who addressed them in the following terms: ‘My friends,’ or ‘my men, you have been detained a short time on board the *Creole* for the purpose of ascertaining what individuals were concerned in the murder. They have been identified and will be detained. The rest of you are free, and at liberty to go on shore, and wherever you please.’

“The liberated slaves, assisted by the magistrates, were then taken on board the boats, and when landed were conducted by a vast assemblage to the superintendent of police, by whom their names were registered. They were thus forcibly taken from the custody of the master of the *Creole*, and lost to the claimants.

“I need not refer to authorities to show that slavery, however odious and contrary to the principles of justice and humanity, may be established by law in any country; and, having been so established in many countries, it cannot be contrary to the law of nations.

"The *Creole* was on a voyage, sanctioned and protected by the laws of the United States, and by the law of nations. Her right to navigate the ocean could not be questioned, and as growing out of that right, the right to seek shelter or enter the ports of a friendly power in case of distress or any unavoidable necessity.

"A vessel navigating the ocean carries with her the laws of her own country, so far as relates to the persons and property on board, and to a certain extent, retains those rights even in the ports of the foreign nations she may visit. Now, this being the state of the law of nations, what were the duties of the authorities at Nassau in regard to the *Creole*? It is submitted the mutineers could not be tried by the courts of that island, the crime having been committed on the high seas. All that the authorities could lawfully do, was to comply with the request of the American Consul, and keep the mutineers in custody until a conveyance could be found for sending them to the United States.

"The other slaves, being perfectly quiet, and under the command of the captain and owners, and on board an American ship, the authorities should have seen that they were protected by the law of nations; their rights under which cannot be abrogated or varied, either by the emancipation act or any other act of the British Parliament.

"Blackstone, 4th volume, speaking of the law of nations, states: 'Whenever any question arises, which is properly the object of its jurisdiction, such law is here adopted in its full extent by the common law.'

"The municipal law of England cannot authorize a magistrate to violate the law of nations by invading with an armed force the vessel of a friendly nation that has committed no offense, and forcibly dissolving the



relations which by the laws of his country the captain is bound to preserve and enforce on board.

“These rights, sanctioned by the law of nations, viz: the right to navigate the ocean, and to seek shelter in case of distress or other unavoidable circumstances, and to retain over the ship, her cargo, and passengers, the laws of her own country—must be respected by all nations; for no independent nation would submit to their violation.

“Having read all the authorities referred to in the arguments on both sides, I have come to the conclusion that the conduct of the authorities at Nassau was in violation of the established law of nations, and that the claimants are justly entitled to compensation for their losses. I therefore award to the undermentioned parties, their assigns, or legal representatives, the sum set opposite their names, due on the 15th of January, 1855.” The total amount awarded was \$110,330. (Extracted and condensed from Moore: Digest of International Law, vol. II, pp. 350-61.)

Sir Frederick St. John, who was at the time attached to the British Embassy at Constantinople, gives the following account of how the British Ambassador gave an asylum in the Embassy to a slave girl to save her from the harsh provisions of Turkish law:

“A curious incident occurred in the summer of 1880 while the Embassy was at Therapia. One of the dragomans came up the Bosphorus from town specially to report that an *odalisk* (a slave lady) from the harem of the deposed Sultan Murad had escaped from the house of a pasha, in whose custody she had been placed, taken refuge in the British Embassy palace, and threatened to stab herself should an attempt be made to expel her.

“Mr. Goschen directed that I should at once accompany our dragoman back to town and interview the

lady. I found a very beautiful, delicate-looking young Circassian, dressed in European clothes, which she had borrowed from the wife of our Embassy porter in exchange for the garb of the poorest of beggar-women, in which she had arrived. I put her, by means of the dragoman, through an interrogatory, and this was her story. On the deposition of the present Sultan's brother she was, as above stated, placed with the family of a pasha holding office at court; but finding life intolerable in such custody (no particulars were given me) she determined to escape and take refuge at the British Embassy. So, after exchanging dresses with an old woman engaged to wash down the stone stairs at early dawn, she sallied forth, for the first time in her life alone, into the streets, and, not knowing the way, wandered about for hours, till so exhausted that she entered a coffee-shop and, holding out a coin, asked that a carriage might be fetched, as she felt too ill to walk, and thus reached the Embassy.

“Having concluded her story, she repeated to me the threat that any attempt to expel her should be followed instantly by self-immolation; and by way of emphasizing her determination she half unsheathed a gleaming weapon wherewith to carry out the ghastly threat.

“I had heard enough, so I withdrew from her presence and hurried back to Therapia, where the Ambassador and his family had just commenced dinner. I was invited to join in the meal, and while so engaged I recounted my interview to eager listeners.

“It was decided that I should next morning return to Pera in the ambassadorial coach, with an assortment of ladies' garments, including a hat and thick veil, wherewith the better to disguise this interesting refugee as I conducted her to the landing-place at Galata, where a British man-of-war's steam-launch would be

in readiness to convey her up the Bosphorus to Therapia.

“On quitting the Ambassador’s residence, and on re-joining after dinner my colleagues in the secretaries’ house at the other end of the Embassy gardens, I went over the same ground with reference to my interview with the beautiful *odalisk*, whose charms I exaggerated not more than five per cent. over the truth (being only on one side Irish); but it was enough to make each one of them regret that he had not been the one selected (by a discriminating chief) to carry out so delicate a mission.

“On my arrival in town the next morning, an eleven miles’ drive, I intimated to the lady, through the porter’s wife, what had been the Ambassador’s decision—which was that she should reside in the Embassy house at Therapia till otherwise determined. On her acceptance of my proposal I directed the porter to extract a certain bundle out of the carriage, and then withdrew.

“After the lapse of twenty minutes or so I was invited by the porter’s wife to reënter the room, where I found a perfectly unrecognizable and fashionably dressed European lady, with whom I reëntered the carriage and drove down to Galata; but it was a market day, and the narrow alley leading from the main street to the landing-place was so crowded with vendors and their wares that we were forced to alight and walk the rest of the distance.

“This was the critical moment. I made her take my arm, and, as we threaded our way through a Mohametan crowd, I became painfully conscious that were I followed by a spy, and denounced as eloping with a lady from the palace, my shrift would be but short. Vendors and purchasers were, however, far too interested in their deals to heed a passing *giaour* couple. and so we safely reached the spot where the steam-launch,

with more than the usual number of bluejackets—armed to the teeth—was in waiting.

“After assisting the veiled one to embark, and seeing the steam-launch well off, I returned to the carriage and drove to the Porte at Stamboul—where, as previously instructed, I informed Artin Bey, the secretary-general of the Foreign Department, of all that had occurred. He is a most intelligent Armenian, with a wonderful volubility of speech, but what I had to impart to him simply paralyzed his tongue. I can see him now, gaping at me in silence as I left the room.

“In the afternoon of the following day he arrived at Therapia, charged by the reigning Sultan, Abdul Hamid, to see Mr. Goschen and demand the release of the absconded one. I was present at the interview. He assured the Ambassador, from the Sultan, that if the lady were returned she should be forgiven for her escapade and every care taken of her. Mr. Goschen replied that only with her free consent should the Sultan’s wish be complied with.

“Artin Bey thereupon besought Mr. Goschen that he might be allowed to speak with the lady. After some hesitation the request was granted, on condition that I was present at the interview—which lasted two hours, during the whole of which time Artin Bey appeared to use all the eloquence at his command to induce the lady to obey the Sultan’s behest, but in vain. To every fresh appeal, while reclining on a cushion with her face to the wall—for she was unprovided with a *yashmak*—the lady replied with a shake of the head, as the tears streamed down her cheeks. At last he rose and departed, evidently much disconcerted, but returned the next day with further offers from the Sultan. She was to choose her own residence, her own attendants, and receive an ample allowance. To these conditions, after a three hours’ interview, during the whole of which

time I was present, she at last agreed; and, on her consent being communicated to Mr. Goschen, he made the condition that before the lady departed he should be furnished with a document, signed by the Ottoman Minister of Foreign Affairs, to the effect that the Sultan promised never to give cause to the Ambassador to regret having surrendered the lady, whose residence should be made known to the Embassy, in order that inquiries might from time to time be instituted, and the fact ascertained that she was contented and happy.

“On the following day Artin Bey returned, this time in a special steamer; and, after submitting the document in the form required, departed with the lady. From all we heard afterwards she appears never to have had cause to regret having accepted the Sultan’s offers.” (Sir Frederick St. John: *Reminiscences of a Retired Diplomat*, p. 194-8.)

In view of the growing abhorrence of slavery and the numerous precedents denying its legality, it is easy to understand the disappointment of the United States at its failure to secure the sympathy of the European powers in the war to prevent secession and the establishment of a slave-holding state determined to perpetuate that institution.

The Senate of the United States, in its report of February 28, 1863, relative to the offer of Napoleon III of “mediation,” expressed “regret that foreign powers have not frankly told the chiefs of the Rebellion that the work in which they are engaged is hateful, and that a new government such as they seek to found, with slavery as its corner stone, and with no other declared object of separate existence, is so far shocking to civilization and the moral sense of mankind that it must not expect welcome or recognition in the commonwealth of nations.” The President was requested to transmit this declaration and protest to the

American representatives abroad for communication to the governments to which they were accredited.\*

\*In a letter to John Lothrop Motley, dated January 26, 1863, John Stuart Mill writes: "But a decided movement in your favor has begun among the public since it has been evident that your Government is really in earnest about getting rid of slavery. I have always said that it was ignorance, not ill-will which made the majority of the English public go wrong about this great matter. Difficult as it may well be for you to comprehend it, the English public were so ignorant of all the antecedents of the quarrel that they really believed what they were told, that slavery was not the ground, scarcely even the pretext, of the war. But now, when the public acts of your government have shown that now at least it aims at entire slave emancipation, that your victory means that, and your failure means the extinction of all present hope of it, many feel very differently. When you entered decidedly into this course, your detractors abused you more violently for doing it than they had before for not doing it, and the *Times* and *Saturday Review* began favoring us with the very arguments, and almost in the very language, which we used to hear from the West Indian slaveholders to prove slavery perfectly consistent with the Bible and with Christianity. This was too much: it overshot the mark. The Anti-Slavery feeling is now thoroughly rousing itself. Liverpool has led the way by a splendid meeting, of which the *Times* suppressed all mention, thus adding, according to its custom, to the political dishonesty a pecuniary fraud upon its subscribers. But you must have seen a report of this meeting; you must have seen how Spence did his utmost, and how he was met; and that the object was not merely a high demonstration, but the appointment of a committee to organize an action on the public mind. There are none like the Liverpool people for making an organization of that sort succeed if once they put their hands to it. The day when I read this I read in the same day's newspaper two speeches by Cabinet Ministers: one by Milner-Gibson, as thoroughly and openly with you as was consistent with the position of a Cabinet Minister; the other by the Duke of Argyll, a simple Anti-Slavery speech, denouncing the pro-slavery declaration of the southern bishops, but his delivering such a speech at that time and place has but one meaning. I do not know if you have seen Cairnes's Lecture, or whether you are aware that it has been taken up and largely circulated by religious societies, and is at its fourth edition. A new and enlarged edition of his great book is on the point of publication,

An amusing incident showing some of the inconveniences of international intercourse between states of unequal culture appears from the following letter which Mr. Hammond of the Foreign Office sent to Lord Lyons May 30, 1867:

“We should like to know as soon as possible at what time we may calculate on seeing the Sultan and what members of his family or of his government he brings with him, and the rank and description of his suite and their numbers. It is to be hoped they will not be too numerous, and that as he is to be lodged in the Palace, the usual habits of Orientalism will for the time be laid aside and the services of his Harem be dispensed with during his visit. It would shock the people in this country to hear of the Sultan being attended by persons not proper to be mentioned in civilized society, and no small inconvenience might result if he was known to have slaves in his suite, for it would be impossible to answer for the enthusiasts of Exeter Hall with so fair an opportunity before them for displaying their zeal and doing mischief.” (Lord Newton’s *Life of Lord Lyons*, vol. I, p. 172.)

In fit conclusion, we wish to quote here once again Hall’s opinion that “...the personal freedom of human beings has been admitted by modern civilized states as a right which they are bound to respect and which they ought to uphold internationally.” (W. E. Hall: *International Law*, 4 ed., § 108, p. 343.)

Slavery has now almost entirely disappeared and is not likely much longer to constitute a problem in international law, but the principles upon which humanitarian interventions for the prevention of involuntary

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and will, I have no doubt, be very widely read and powerfully influential.” (The *Letters of John Stuart Mill*, edited by Hugh S. R. Elliot, vol. I, p. 277-9.)

servitude have so frequently been based seem destined to play an important role in the future, by reason of the close analogy between the condition of slavery and that economic thralldom in which human beings are made to toil beyond the limits of reasonable endurance. It has sometimes happened that laborers, including pregnant women, and children of tender age, have been forced by economic pressure to work in sweatshops and elsewhere under conditions which shock the right sentiment of humanity. The same irresistible force of public opinion which in the past has demanded intervention to repress the abhorrent slave trade and to discountenance slavery will probably drive on governments to adopt a similar course and to intervene for the purpose of reforming the conduct of states where the conditions of labor are so intolerable as to shock the humane sentiments of other states.

We shall see further along an application of this kind of intervention in the legislation adopted by certain states for the purpose of compelling other states to protect passengers voyaging under their flag and prevent an abusive or inhuman treatment of seamen.

#### POLITICAL REFUGEES

Asylum has often been granted in warships and legations to political refugees. In certain states which are subject to frequent revolutions and periods of turmoil when factional animosities prevail over all considerations of justice and patriotism, it has been customary to offer an asylum in legations and consulates to political fugitives.

It may be argued that this is justifiable as an intervention on the ground of humanity to prevent the unnecessary slaughter of men whose qualities of leadership are needed by the country. On the other side it is



argued that this intervention tends to preserve the refugees to fight another day, and so to prolong the miseries of the whole country in order to save a few lives.

From Professor Moore's interesting study of Asylum in Legations and in Vessels, we take the following extract summarizing certain instances of political asylum granted in certain European States in time of disturbance: "During the disorders at Naples in 1849, Lord Palmerston said that while it 'would not be right to receive and harbor on board of a British ship of war any person flying from justice on a criminal charge, or who was escaping from the sentence of a court of law,' yet a British man-of-war had always been regarded as a safe place of refuge for persons fleeing 'from persecution on account of their conduct or opinions,' whether the refugee 'was escaping from the arbitrary acts of a monarchical government or from the lawless violence of a revolutionary committee.' (British State Papers, vol. 50, p. 803.) In August of the preceding year the Duke of Parma, whose life was threatened, was embarked at Civita Vecchia on the British man-of-war *Hecatée*, (Ibid, vol. 41, p. 1316), and in the same month the British admiral ordered H. M. S. *Bulldog* to the same port to receive the Pope, should commotions render it desirable for His Holiness to seek refuge on board (Ibid, vol. 41, : 1324). During the revolution in Greece in 1862, King Otho and his queen were afforded protection on the British Frigate *Scylla* (Ibid, vol. 58: 1034), while a member of the cabinet and his family were received on the *Queen* and several persons were sheltered on the French man-of-war *Zénobie*. The instructions given by Vice-Admiral Sir William Martin on that occasion to the commanders of British ships of war declared that their duty was 'limited to the protection of the lives and property of British subjects

and to affording protection to any refugees whom you may be informed by Her Majesty's minister would be in danger of their lives without such protection.' (Ibid, vol. 58, p. 1057.) Under these instructions, the reception of refugees by the British commanders was carefully restricted (Ibid, p. 1087)."

A rather exceptional instance of asylum in a battleship was that which the British Government was ready to offer the Pope shortly after the outbreak of the Franco-German war to carry him safely to England. Had the Pope actually taken refuge on a British warship, it might have been classed as an instance of humanitarian intervention to prevent any danger to the person and dignity of the head of the Roman Catholic Church. (See Parliamentary Papers, 1871, vol. 72 [c. 247] p. 4-5.)

It is in certain states of America that this form of humanitarian intervention has most frequently been employed. In some instances, the states concerned have made energetic protest. On the whole the United States has tended to support the opinion which is against the granting of political asylum.

The French Government expressed a different view, when in the case of four ex-ministers of Peru who sought refuge in the French Legation, Nov. 6, 1865, M. Drouyn de Lhuys instructed the French consul temporarily in charge of the legation that the right of asylum was too much in conformity with feelings of humanity for France to consent to abandon it, but that it was solely requisite to facilitate the departure from the country of persons who could not remain there without personal danger and danger to the country itself. (Extract quoted from Sir Ernest Satow: *Diplomatic Practice*, London, 1917, vol. I, 291-2; J. B. Moore: *Asylum*, *Political Science Quar-*

terly, March, 1892, vol. vii, p. 29-37, gives a more full account.)

Mr. Hovey, who was the American Minister to Peru shortly thereafter, during the revolutionary distress which still prevailed, was so impressed with the abuses which asylum covered that he refused to grant it until his government should expressly instruct him to do so. Mr. Hovey's views are expressed in his dispatch to Secretary Seward, January 28, 1867:

“In my dispatch No. 4, dated December 28th, 1865, I addressed the Department of State in relation to the question of diplomatic asylum, stating that I should refuse to exercise that power until I was otherwise directed. I have not as yet received an answer to that communication, and have concluded from your silence that the government approved my course.

“On the 12th day of the present month I received a note from his excellency Senor Don Toribio Pacheco, minister of foreign affairs, inviting me to a conference for a definite agreement as to the principles of international law in relation to this important subject. Being indisposed at the time I addressed a note to his excellency, in which I reiterated the substance of my No. 4, above referred to, alluding therein to the authorities of Wheaton, Woolsey, and Polsin, denying the doctrine of asylum, but saying to his excellency that if other foreign ministers were permitted to exercise the right in Peru, I should expect to be entitled to the same.

“Being invited to a diplomatic conference of the 21st instant, I attended the same, and offered the following resolutions:

“1. The diplomatic body here assembled resolve that they, and each of them, jointly and severally, acknowledge and recognize Peru as a Christian nation.

"2. As each Christian nation should, by international law, be entitled to all the rights properly claimed by others, therefore—

*"Resolved,* That Peru is entitled to the same rights and privileges, through her diplomatic agents abroad, that we, as representatives near the government of Peru, are respectively entitled to here, and that we cannot, in justice, claim more than our respective governments accord to the representatives of Peru.

*"3. Therefore resolved,* That we recognize the law of nations, as relating to the question of asylum, to be the same as practiced in the United States, and in England, France, and other Christian nations of Europe.

"The representatives present, of France, England, Brazil, Bolivia, Chili, and Italy, contended for the right of asylum, and opposed the resolutions.

"The Peruvian government insists on being placed upon a footing with civilized nations of the world. You will thus see that I have alone supported the position assumed by the authorities of Peru. I do not believe that the history of Peru can furnish a single example where the innocent have been shielded by asylum; nearly all the cases of which I have heard are those applying strictly to citizens of Peru charged with conspiracy or treason.

"One case, that of Captain Carwell, an Englishman, turned upon the point of his contempt of court in an order made for the delivery of property. Refusing to obey the warrant of the court, he fled for protection to the English legation, from whence, after eleven months, he made his escape, still refusing to obey the orders of the court, and taking with him the property in dispute.

"Another case, which transpired shortly before my arrival, was that of General Canseco, vice-president of the republic, charged with conspiracy against the government; he remained in the legation of the United

States some three or four months, where he was in daily communication with his co-conspirators. At length he agreed with President Pezet to exile himself to Chili upon the payment of one year's salary; he received the pay, was permitted to depart, landed in two days upon the coast of Peru, and a few weeks afterward returned with an invading army to the walls of Lima.

“The third case involves the question now pending between France and Peru, and arose by asylum being given by the French legation on the 20th of December, 1865, to three Peruvians, charged by the central court with peculation, conspiracy, and treason.

“Two of the same gentlemen applied to me and were refused. This gave rise to my dispatch No. 4, already alluded to, on this question.

“The French chargé d'affaires, Mr. Emile Vion, refused to acknowledge the right of the government to arrest them, although the officers of the law demanded them under writs from the central court. The chargé d'affaires referred the case to the Emperor of France, and his action was approved; but the chargé d'affaires was ordered to solicit the settlement of the question of asylum by the Peruvian government and the diplomatic corps resident in Lima. As no person arrested by the government upon any charge has as yet suffered the extreme penalty, it is apparent that the plea of cruelty or barbarity cannot be sustained as the cause for giving asylum. Peruvians were dealing with Peruvians, and should, in my opinion, have been left to their own laws and courts. The practice of giving asylum has been and still is a prolific source of revolutions in, and the instability of, the South American republics. The traitor, who would for his own ambition steep his country in blood, feels assured that if he fails in his rebellion he has only to flee to the house of some minister, and that there he will find a refuge beyond the reach of

justice. Thus encouraged, and the high crime of treason varnished over with the soft name of "political offence," he launches recklessly into his ambitious schemes, and the country is kept in continual commotion. If there should be a single unfriendly minister to the government here, (and there always is), his legation at once becomes the asylum and headquarters for the conspirators against the government. Is it strange, then, that revolutions here are so common? In my opinion, that man will prove a benefactor to South America who breaks down this ancient relic of barbarism and aids in bringing the guilty to the quick punishment of the laws against which they may have offended.

"With childlike faith Peru trusts, at least for moral aid, to the United States, and I submit that, by placing her upon a level with other Christian nations, the chances of her advancement would be greatly increased, as permanent governments would more securely follow." (Diplomatic Correspondence, 1867, Pt. II, p. 736-8.)

But the international practice of the principal states has continued to recognize the legality of political asylum in certain states of Latin America, and the two most recently published volumes of the Foreign Relations of the United States show that that Government also recognized by its practice the legality of humanitarian asylum when used in a nonpartisan manner to save the life of political refugees and to permit them to escape from the country.

The general practice of the United States in regard to what Secretary Knox designated as "temporary refuge," in contradistinction to "permanent asylum," was embodied in his instructions to the Consul General at Guayaquil, Ecuador, April 5, 1910, as follows: "You may in your discretion afford temporary refuge where

such is necessary in order to preserve innocent human life.” (Foreign Relations, 1912, p. 399, note.)

Early in January, 1912, it would appear that the American Minister advised the Consul General at Guayaquil, and the Commander of the *Yorktown* “to receive no political refugees,” but in his dispatch of January 30, 1912, Secretary Knox instructed the American Minister:

“You are correct in assuming that what is technically known as ‘the right of asylum’ in a strict sense is not claimed by this government. However, there is an evident distinction between this case and that where temporary refuge is given within the residence of a consular or diplomatic representative in order to preserve innocent human life. The general practice of the Department on the subject of temporary refuge is embodied in an instruction to the Consul General at Guayaquil which you will find in the files of the Legation. [See instruction of April 5, 1910, above.]

“In the case of temporary refuge, the Department finds it expedient to give a certain latitude to the judgment of the official who is called upon to determine, within his discretion, the course recommended by broad considerations of humanity in each individual case. It is accordingly the general rule of the Department to place all emphasis upon the responsibility of the consular or diplomatic officer in the matter and to permit him, within these limitations, at his discretion to afford temporary refuge where such is necessary to preserve innocent human life.” (Foreign Relations, 1912, p. 399.)

In his dispatch of March 18, 1912, the American Chargé, Bingham, at Quito, Ecuador, reports the disturbed condition of affairs, and the possibility of further violence resulting in a “state of affairs closely

resembling anarchy." Chargé Bingham's report continues:

"As a proof that much anxiety is felt by all classes, I have the honor to inform the Department that several individuals have requested asylum in this legation in case of further disturbance in Quito. To everyone who has asked for asylum I have replied that the Department of State deprecates the granting of asylum except where it is absolutely necessary from the point of view of humanity, to save life; that I could not discuss a hypothetical question of future danger but must decide each case on its merits as it arose; and I strongly urge the individuals in question to adopt every other means of securing their safety in case of trouble instead of coming to this Legation, as I desired to hold absolutely aloof from all internal question." (Foreign Relations, 1912, p. 406.)

In China, during the disturbances of 1911, the American Vice Consul at Foochow telegraphed: "The right of asylum may be requested by the mandarins. Instructions requested." (Foreign Relations, 1912, p. 173.)

Acting Secretary of State Adey replying the same day that this arrived, November 7, 1911, sent the following instructions: "The right of consular asylum is not claimed by this government, but you may use your discretion as to granting temporary refuge where such is necessary to preserve innocent human life, carefully avoiding action that might appear partisan." (Ibid, p. 174.)

Three days later, the American Chargé Williams at Peking telegraphed: "Asylum at the Legation has been asked by the Emperor and Empress Dowager, which I strongly urge be granted." (Foreign Relations, 1912, p. 174.) To this, Secretary of State Knox replied with the accustomed formula: "In accordance



with the uniform policy of this government you may at your discretion afford temporary refuge where such is necessary to preserve innocent human life,<sup>9</sup> first ascertaining that your colleagues believe safety of the legation quarter not thereby endangered." (Ibid, p. 174.)

On October 24, 1912, the American Consul at Vera Cruz, Mexico, telegraphed for instructions: "No foreigners hurt or property destroyed. City in the possession of Federals. Diaz is a prisoner; if asylum is asked for will be refused." (Ibid, p. 924.) Secretary Knox, who had received the American Chargé's report of October 27,<sup>10</sup> repeated the portion of the American Consul's telegram regarding asylum for General Felix Diaz, and instructed the Chargé as follows: "The Department presumes there will be no occasion either to grant or to refuse asylum to Diaz, since he is held a prisoner by Mexican Federal forces. You will inform the Consul at Vera Cruz, however, that the position of the Department with regard to asylum is as follows: 'The Government of the United States does not claim what is technically known as the right of asylum in the strictest sense. There is, however, an evident distinction between cases of this kind and cases in which temporary refuge is given in order to preserve innocent human life. In cases of the latter kind the Department of State finds it expedient to give a certain latitude to the judgment of the officer who is called upon to determine within his discretion the course recommended

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<sup>9</sup>Exactly what is meant by "innocent human life" does not appear from the correspondence, nor are we informed whether Mr. Williams considered that this designation would apply to and include the Empress Dowager.

<sup>10</sup>The American Chargé, in his dispatch of October 27 had reported as follows:

"Both Mexicans and foreigners have crowded this Embassy asking that I take some action with President Madero in

by broad considerations of humanity in each individual case. It is accordingly the general rule of the Department of State to place all emphasis upon the responsibility of the officer concerned and to permit him within these limitations, at his discretion, to afford temporary refuge where such is necessary to preserve innocent human life.' '' (Ibid, p. 925-6.)

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behalf of Diaz, some insisting that he should not be executed; others that such execution be postponed. I have replied to one and all that the embassy could not under any circumstances take action or make representations, as his case was one of Mexican internal politics.

“Similar visits of committees from their colonies with petition to take some action for the sake of humanity have been received by the other members of the Diplomatic Corps, who have been much excited over the reported determination to execute Diaz. The wife of the Spanish Minister (acting Dean of the Diplomatic Corps), herself a Mexican by birth, went to see the Maderos, but was coldly received. The British Minister was very active for a time, saying that of course he could not act in the name of his government without instructions, but was acting for his colony. German and French Ministers will do nothing.

“Madero has made a speech, in reply to a manifestation, in which he concludes: ‘General Diaz will be punished with all rigor. And I know very well that it is the wish of the nation that the blood of the guilty wash out the blood shed by General Diaz on June 25, 1879.’” (Foreign Relations, 1912, p. 924.)

Relative to the occurrences of 1879, John W. Foster relates an interesting incident which took place at the time that he was minister to Mexico, during the interregnum before General Diaz arrived in Mexico City. Mr. Foster had invited members of the American Colony to the legation, and they came armed. Mr. Foster relates: “Our vigil passed with only two interruptions. A Senator called at an early hour to ask if he might become my temporary guest. He had been a champion in Congress of the Lerdo régime and showed much bitterness towards the Diaz movement, and feared that he might be exposed to insult, if not danger, from excited partisans of Diaz before order was established. He was my personal friend and I was glad to give him a room in my house. In the early hours of the morning General —, a gallant old soldier,

One year later, when General Diaz found "temporary refuge" on the American warship *Wheeling*, Secretary of State Bryan in a letter of October 28, 1913, to the Secretary of the Navy, explained the attitude of the Department of State:

"I have the honor to acknowledge the receipt of your letter of this date transmitting a copy of a telegram received by you from Admiral Fletcher, at Vera Cruz, with reference to the action of the U. S. S. *Wheeling* in taking on board General Diaz and two friends, and Williams, American correspondent of the New York *Herald*.

"In this connection I beg to advise that, while the rule governing such cases is that it is the duty of American men-of-war to protect American citizens, it is, as a general rule, against the policy of this government to grant asylum in its ships to the citizens of foreign countries engaged in political activity, especially when such asylum is for the purpose of furthering their political plans. Temporary shelter to such persons, when they are seeking to leave their country, has sometimes been conceded on grounds of humanity, but

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a former Minister of War, my near neighbor, for a similar reason also asked to become my guest, and brought with him his favorite war-horse, the companion of many campaigns, a noble animal. I gave the General my best chamber and quartered the charger in the Legation *patio*. My two distinguished guests remained with me for forty-eight hours only, but an amusing and somewhat embarrassing condition was developed. These two gentlemen, while both hostile to the Diaz movement, were bitter personal enemies, and could not be brought together at my table or in my family circle. So they were voluntary recluses in their own apartments during their stay. The practice of resort by public men to legation asylum is quite common in Latin-American States in time of disorder and revolution, but my experience in this instance was unique, in that the Legation at one and the same time afforded protection to public men, bank treasurers, and war-horses." (John W. Foster: *Diplomatic Memoirs*, vol. I, p. 81.)

even this is done with great circumspection lest advantage be taken of it to further the political fortunes of individuals with the result of involving us in the domestic politics of foreign countries.

"In this case you will please direct the commander of the *Wheeling* to furnish Williams, the American correspondent of the New York *Herald*, who, we take it for granted, is not a citizen of Mexico, asylum on the American ship until he can secure passage to the United States. In the case of General Diaz and his two friends, you will give them temporary asylum until they can find a ship to take them away from Mexico, it being taken for granted that they do not desire to remain in Mexico. They will, of course, understand that while they are on an American ship they cannot use it as a basis for political activity." (Foreign Relations, 1913, p. 854-5.)

We learn from the report of the American Consul at Matamoras, of April 7, 1913, that he permitted General Estrada to remain with him for sixteen days. The Consul explained his action as follows: "The old General could not get across the river without great danger, and I thought it an act of humanity to protect him. I have refused others protection but I deemed his case a very meritorious one. I hope and trust that I did not commit a great wrong." (Ibid, p. 789.)

In reply, Mr. Carr, writing for Secretary Bryan, instructed the Consul as follows: "While the Department is not inclined to disapprove your action under the circumstances as you explain them, it is not entirely clear that it was necessary for such protection to be extended over so long a period of time, especially in view of the proximity of the international border.

"In this connection it seems pertinent to invite your attention to the Department's standing instructions that, while indisposed to direct its representa-

tives to deny temporary shelter to any person whose life may be immediately threatened, this government does not sanction the usage of asylum and enjoins upon its representatives the avoidance of all pretexts for its exercise.

“Your action therefore in similar cases which may arise in the future should be limited to the affording of protection only when it appears to be absolutely necessary for the preservation of life<sup>11</sup> and should be in the nature of temporary refuge. It should be distinctly understood that the protection extended should be strictly limited as indicated, and that no promise of shelter should be given in advance of an emergency seeming to call therefor.” (Foreign Relations, 1913, p. 796-7.)

If any further evidence were needed conclusively to demonstrate the existence in certain states of South America of a well recognized practice of granting asylum in the case of political refugees, we might give the incident of President Leguia, of Peru, who was deposed by a revolution. In his dispatch of July 27, 1913, the American Minister reported that President Leguia, whose residence was attacked by a mob “asked for and was offered asylum at the legation in protection of innocent human life, if he could make his escape.” But the President and his son were arrested and placed in the penitentiary. Secretary Bryan on August 4, 1913, instructed the American Minister to “leave undone nothing” he could properly do to save the lives of the President and his son and the Vice-President.

The American Minister’s report of July 31 gives the following information: “Vice-President Leguia [a brother of the President] has been given asylum by the

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<sup>11</sup>It will be noticed that Mr. Carr has dropped the limitation that the life saved should be “innocent.”

Italian Minister, who informed the Foreign Office on July 26 of the rumored attempt on the life of ex-President Leguia, who is still a prisoner. The representations of the Italian Minister were supported by the British and Brazilian Ministers and my own, asking for an ample guard. The Under Secretary of State assured me later that he had communicated these representations to the President." (Foreign Relations, 1913, p. 1142.)

On August 10, ex-President Leguia was permitted to sail with his son for Panama. In his dispatch of August 19, the American Minister reported as follows to the Secretary of State regarding the asylum which had been granted by the representatives of Italy and France:

"I have been favored by the Italian Minister with a copy of his note addressed to the Foreign Office, dated July 25, 1913, informing the Peruvian Government that Vice-President Roberto Leguia had taken refuge, and been given asylum, in that Legation on that day. It will be noted that such asylum was sought the same night on which the residence of the former President was attacked. The French Minister also informed me that another brother, Carlos Leguia, Vice-President of the Senate, had asked for, and been offered asylum in the French Legation, provided he found that the necessity therefor should exist. .

"The Peruvian Foreign Office replied to the Italian Minister on July 29 stating that no order for the arrest of the Señor Leguia in question had been issued. It was then that the latter left the Italian Legation. I have learned that the Italian Minister, in addition to writing the Foreign Office, personally asked for and was furnished a guard of half a dozen soldiers, who were placed within the Legation residence.

“I have sought this information because it will preserve written evidence of the recognition by the Peruvian Government of the right of a political refugee to seek and be accorded asylum in the legation of a foreign country, which may prove of value in the future and serve as a precedent.” (Foreign Relations, 1913, p. 1145.)

In many of the instances in which fugitives have been received in legations and consulates to save their lives from mob violence, the action taken was not necessarily opposed to the will of the *de facto* government, but it is sometimes hard to draw the line between mob violence and revolutionary activity.

It cannot be denied that political asylum in legations and warships is a form of humanitarian intervention which easily opens the door to interference in the political affairs of the state. It is hard to separate political offences from ordinary crimes, and this often leads to friction between the local authorities and the foreign official who has taken the fugitive under his protection.<sup>12</sup>

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<sup>12</sup>Millard's Review, in its number of August 21, 1920, discussing the Presidential Mandate for the arrest of the Anfu leaders, states that nine out of the 10 leaders were in the Japanese Legation at Peking, and quotes the French daily paper of Peking as having called the place in which they were living the "Hotel Obata." (Millard's Review, Aug. 21, 1920, p. 625.)

The same Review, in a later number, (September 18, 1920, page 112) carries a picture reproducing a cartoon by a Russian artist in Shanghai, showing the "Chinese Anfu 'traitors' in their present rôle as 'guests' of the Japanese Legation in Peking." Over this illustration, there is the title "Mr. Obata's Anfu guests."

Japanese conduct is criticized in an article too long for us to quote in full. It is stated that Mr. Obata, Japanese Minister to China, having learned that the Minister of Foreign Affairs intended to ask for the extradition of the Anfu leaders on the ground that they were not political offenders, and that they

As soon as any state demonstrates its capacity to fulfil all the obligations of international law, and to preserve throughout its territory a reasonable respect for law and property, it will acquire the confidence of other states. We may expect that in the course of time, humanitarian asylum will disappear from Latin America as completely as it has vanished from Europe.

As yet, however, the most powerful and civilized states have not considered that this form of intervention can be abolished in the case of those less civilized states where revolutions are frequent and the ensuing executions and cruelties constitute a reproach not only to the participants, but also to those who refuse to intervene to help the victims.

#### § 8(g). FOREIGN COMMERCE

There is still another field of application for humanitarian intervention, which relates to the commerce of other states and it is therefore of considerable importance. Action of this kind gives rise to questions of great delicacy, and necessitates the closest juridical

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had committed criminal offenses, sent to the Minister of Foreign Affairs, under date of August 27th, the following note:

“I have the honor to acknowledge the receipt of Your Excellency’s note, dated August 22, replying to my note of August 9, on the subject of Mr. Hsu Shu-Cheng and others who are in the Imperial Legation Guard Compound.

“In that note it is stated that your government is unable to accede to the contents of my previous note and that you will make further communication to me based upon judicial evidences.

“I now have the honor to state in reply that in view of the facts that the Presidential Mandate looking to the arrest of the individuals in question was issued on political grounds, and that this legation is giving them refuge as political offenders, I shall not be in a position to comply with the request of extradition, irrespective of any criminal offences with which they may be charged.” (Ibid, p. 112-113.)



reasoning. We find three forms of application, namely: Regulation of Foreign Shipping; Denial of Transit; Prohibition of Entry.

### REGULATION OF FOREIGN SHIPPING

Certain legislative enactments undertake to compel foreign states to adopt for their vessels regulations which will protect the lives of passengers and guarantee the humane treatment of all seamen.

The manner in which this humanitarian object has been achieved is well illustrated in the case of the Plimsoll Act, by which Great Britain undertook to penalize vessels entering or leaving her ports loaded beyond the point of safety.<sup>18</sup>

As finally enacted, § 24 of the Merchant Ship Act, 1876, reads as follows:

“After the first day of November, one thousand eight hundred and seventy-six, if a ship, British or foreign, arrives between the last day of October and the sixteenth day of April in any year at any port in the United Kingdom from any port out of the United Kingdom, carrying as deck cargo, that is to say, in any uncovered space upon deck, or in any covered space not included in the cubical contents forming the ship’s registered tonnage, any wood goods coming within the following descriptions.....the master of the ship, and also the owner, if he is privy to the offense, shall be liable to a penalty not exceeding five pounds for every hundred cubic feet of wood goods carried in contravention of this section, and such penalty may be recovered by action or on indictment or to an amount not exceeding one hundred pounds (whatever may be the

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<sup>18</sup>For a concise account of this legislation, see Stowell and Munro: *International Cases*, vol. I, p. 439-445. We have borrowed a few extracts from this account.

maximum penalty recoverable) on summary conviction." (English Law Reports (1876), Statutes, vol. XI, pp. 502-03.)

When this provision of the Act of 1876 was called to the attention of the United States, "The Department of State," to borrow the words of Professor J. B. Moore, "replied that, as attention was thus particularly called to the questions under section 24, it seemed proper to state that the right to impose penalties on the master or owner of an American vessel, sailing from a port of the United States, for the manner in which the cargo was laden or stored, was of so doubtful a character that, however wise or beneficent the intent of the act might be, the Government of the United States 'cannot but invite the attention of Her Majesty's Government particularly thereto, before further steps are taken in Great Britain to enforce obedience to the law in these particular cases, and before any steps be taken toward the enforcement of fines in these or similar cases.'

"The representations of the United States 'appear to have received the careful attention of the Government of Great Britain, and toward the close of the year 1877, the minister of the United States at London received a note from Lord Derby, justifying the provisions of the act adverted to, which had been specially made the subject of complaint, as not inconsistent with the principles of international law, or with the practice of nations in such matters,' and expressing the hope that the United States would 'yield the provisions of the act mentioned a friendly support, by enjoining its observance on the part of American shippers and owners of vessels, in the interest of humanity.' The subject thereafter 'failed to become one of special action on the part of the United States.' " (Moore's International Law Digest, Vol. II, § 204, p. 282-3.)

The Act of 1876 was consolidated without modification in 1894, and Parliament in 1906 passed an act amending the Merchant Shipping Acts by the addition, amongst others, of several provisions affecting foreign shipping. The British loadline provisions were made to apply to foreign ships "while they are within any port of the United Kingdom," the power to detain unsafe ships of foreign nationality was extended to include cases of defective equipment, and power was given to apply rules as to life-saving appliances to foreign ships "provided that His Majesty may by Order in Council direct that these provisions shall not apply to any ship of a foreign country in which the provisions in force relating to life-saving appliances appear to His Majesty to be as effective as the provisions of Part V of the principal act, on proof that these provisions were complied with in the case of that ship." (Statutes (1905-06), pp. 248-49.) But the most significant extension of jurisdiction in 1906 was that laid down in the section relating to foreign ships carrying cargoes of grain, as follows:

"If after the first day of October, one thousand nine hundred and seven, a foreign ship laden with grain cargo arrives at any port in the United Kingdom having the grain cargo so loaded that the master of the ship, if the ship were a British ship, would be liable to a penalty under the provisions of Part V of the principal act relating to the carriage of grain, the master of that foreign ship shall be liable to a fine not exceeding three hundred pounds."<sup>14</sup> (Statutes (1905-06), p. 248. The two preceding paragraphs are copied from Stowell and Munro's Cases, vol. I, p. 442-3.)

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<sup>14</sup>From the testimony of the President of the American Seamen's Union, Mr. Andrew Furuseth, given before the Senate Committee, we take the following extract:

"MR. FURUSETH. I want to call attention to this: That one of the things that was advocated by some of the members sit-

The Seamen's Act of March 4, 1915, popularly known as the La Follette Act, contains several provisions which like the British Acts above referred to, exercise by means of penalties imposed within American jurisdiction a certain control over foreign vessels, even when they are outside of American waters. Section 13 of the Act in part provides:

“That no vessel of one hundred tons gross and upward, except those navigating rivers exclusively and the smaller inland lakes and except as provided in section one of this Act, shall be permitted to depart from any port of the United States unless she has on board a crew not less than seventy-five per centum of which, in each department thereof, are able to understand any order given by the officers of such vessel, nor unless forty per centum in the first year, forty-five per

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ting on the commission of 1906, the report of which you have, was that the laws (British) governing English seamen should be made applicable to foreign vessels.

“SENATOR BURTON. I noticed that. They would not agree with the conclusions unless they were made applicable to foreign ships.

“MR. FURUSETH. Exactly. As a matter of fact, the laws dealing with deck load, the laws dealing with freeboard, the laws dealing with everything that has to do with safety of life among passengers, and...among the employees,...apply to foreign seamen in foreign vessels while in English ports. Thus, if an American vessel is lying in a port of England and one man gets hurt, he can sue the American vessel in the English court under the British compensation act now,...and Parliament gave to the board of trade definite authority to detain vessels that were undermanned or unseaworthy by reason of being undermanned, and they exercise that authority not only over native vessels, English vessels, but they exercise it over foreign vessels...Here is a circular issued by the board of trade to the boarding officers, giving them instructions how the vessels must be manned as a minimum.” (Synopsis of Hearing before the Subcommittee of the Committee of Commerce of the Senate relative to involuntary servitude imposed upon seamen, p. 43.)

centum in the second year, fifty per centum in the third year, fifty-five per centum in the fourth year after the passage of this Act, and thereafter sixty-five per centum of her deck crew, exclusive of licensed officers and apprentices, are of a rating not less than able seamen.” (Seamen’s Act of March 4, 1915, Sec. 13.)

Further along the same section provides: “The collector of customs may, upon his own motion, and shall, upon the sworn information of any reputable citizen of the United States setting forth that this section is not being complied with, cause a muster of the crew of any vessel to be made to determine the fact; and no clearance shall be given to any vessel failing to comply with the provisions of this section:”

Section 14 of the Seamen’s Act in part provides: “That foreign vessels leaving ports of the United States shall comply with the rules herein prescribed as to life-saving appliances, their equipment, and the manning of same.” Then follows a detailed set of regulations specifying the type and number of the life-saving appliances, etc. Detailed regulations are also set out in regard to the qualifications and number of men for the manning of the boats, muster rolls and drills, and the duties assigned by the muster list to the different members of the crew are carefully specified.

“Before the vessel sails,” declares the Act in this same section, “the muster list shall be drawn up and exhibited, and the proper authority, to be designated by the Secretary of Commerce, shall be satisfied that the muster list has been prepared for the vessel. It shall be posted in several parts of the vessel, and in particular in the crew’s quarters.”

The owner of any vessel who neglects or refuses to provide and equip his vessel with the lifeboats, etc., as specified in the Act, is subjected to a fine, as is “...every master of a vessel who shall fail to comply

with the requirements of this section, and the regulations of the Board of Supervising Inspectors, approved by the Secretary of Commerce, authorized by and made pursuant hereto." (Seamen's Act of March 4, 1915, § 14.)

In so far as these regulations are reasonably necessary to provide for the security of international passenger travel, the United States is justified by the principles of humanitarian intervention, which we have above discussed, in using its sovereign authority over foreign vessels temporarily sojourning in the harbors of the United States to compel a compliance with them, and it will not be a valid objection in international law that the United States does in effect so use its sovereign authority to regulate the action of the vessels in question, even when they are without the jurisdiction of the United States and upon the high seas.

The United States would be amply justified in refusing entry to any and all foreign vessels failing to regulate their commerce so as to provide for the security and humane treatment of passengers and crew. It is evident that the same result may be obtained by a less drastic method of penalizing, while within the jurisdiction of the United States, those foreign vessels that fail to make reasonable provision for the security and humane treatment of passengers and crew.

Section 16 of the Seamen's Act of March 4, 1915, applies to the arrest and imprisonment of officers and seamen deserting from merchant vessels. It reads as follows:

"That in the judgment of Congress articles in treaties and conventions of the United States, in so far as they provide for the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of the United States in foreign countries, and for the arrest and imprisonment of of-

ficers and seamen deserting or charged with desertion from merchant vessels of foreign nations in the United States and the Territories and possessions thereof, and for the coöperation, aid, and protection of competent legal authorities in effecting such arrest or imprisonment and any other treaty provision in conflict with the provisions of this Act, ought to be terminated, and to this end the President be, and he is hereby, requested and directed, within ninety days after the passage of this Act, to give notice to the several governments, respectively, that so much as hereinbefore described of all such treaties and conventions between the United States and foreign governments will terminate on the expiration of such periods after notices have been given as may be required in such treaties and conventions." (Act of March 4, 1915, § 16.)

The testimony of Mr. Andrew Furuseth, President of the Seamen's Union of America, describes the purposes of this provision as follows:

"...Giving the foreign shipowner the right to ship his men, as he unquestionably has in his own port, to come here, and then giving him the right to use the machinery of the American police and courts to compel the performance of a contract to labor, you are giving to the foreign shipowner a privilege you have refused to your own citizens long ago, and by so doing you are putting a preferential against American shipping. That has been the situation in the past, and if it is permitted to go on will be sufficient in the future to make any competition with the foreign shipowner in the actual ocean trade impossible. If you apply the true American principles of equal freedom, if you apply the system of free soil, making free men, which the Supreme Court, in all probability, would apply if it were taken to it to-day; if you accepted that proposition and that idea, and carried it out, and made the law, as you

make it here, applicable to foreign seamen while under the jurisdiction of the laws of the United States, he will have to pay as much for his seamen as you will have to pay for your seamen, and all the discrimination against the American shipowner will fall away.

“But it will go further than that. A vessel coming from Europe and staying in New York three days will, in order to secure herself, pay about the New York wages from the European port from which she goes. Who is hurt? The foreign shipowner? Yes. Why is he hurt? He is hurt in something he had no right to. He had no right to a specific privilege over the American shipowner in taking cargoes or passengers out an American port; and we believe—and our belief is based on years of experience—that this will equalize the cost of operation and will do a little more than that, because the foreign shipowner whose ship is in the United States has his ship in a foreign port, while the American shipowner has his ship in the home port, and any shipowner will tell you that it costs more to do it in a foreign port than in the home port where it is under his own supervision.” (Extract from the testimony given by Mr. Furuseth in Synopsis of Hearing before the Subcommittee of the Committee on Commerce of the United States Senate relative to involuntary servitude imposed on seamen, p. 5.)

Speaking at the same hearing in opposition, Mr. Robert Dollar, President of the Dollar Steamship Co. of San Francisco, said: “. . .Gentlemen, do you understand thoroughly what this means? It means that any contract that a sailor may make in a foreign country is abrogated when he comes here. It is a provision for a breach of contract by any sailor coming to this country. . . .Representing over 3,000 merchants of the Chamber of Commerce of San Francisco, who are not interested in shipping, I protest against the passage of



this clause. Outside of the trouble of changing some 21 treaties, causing ill feeling between foreign nations and ourselves, it will seriously affect the carrying of our products by materially increasing the rate of freight and causing the dear American public to foot the bill, as we will have to depend on foreign ships to move our products in the foreign trade for many years to come." (Ibid, p. 5-6.)

It was formerly recognized by all of the nations that they were obligated, even in the absence of treaty stipulations, to coöperate for the arrest and detention of deserting seamen. During the Revolutionary Wars, when Great Britain was engaged in conflict with France, there was much friction between the United States and Great Britain because of the refuge which their deserting seamen found in our ports. The United States contended that in the absence of a treaty they were not bound to deliver over the deserters.<sup>15</sup>

The practical importance of the view expressed by the United States was lessened by the numerous treaties in which the obligation to deliver deserting seamen was included, but the enforcement of the Act of March 4, 1915, will put an end henceforth to the coöperation of the United States in this matter, since it directs the President to abrogate conflicting articles of treaties (see § 16 above.)<sup>16</sup> It would, however, appear that President Wilson did not comply with the provisions of the Act relative to the abrogation of the articles of the treaties in question.<sup>17</sup>

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<sup>15</sup>See Moore's Digest, vol. IV, § 622, p. 417f.

<sup>16</sup>Congress, by the Act of December 2, 1898, repealed the law that authorized the arrest of deserters from vessels of the United States in the ports of the country. (Moore's Digest, vol. II, p. 418.)

<sup>17</sup>It has been stated that President Wilson's objection was based upon the ground that it was not competent for Congress to advise the executive to give notice of the abrogation of separate articles of a treaty.

As indicated by the testimony of Mr. Andrew Furuseth, President of the organization which was most influential in securing the adoption of this legislation, one of the purposes of the application of Section 16 of the Act to foreign vessels is to force the payment to foreign seamen of a scale of wages sufficiently high to prevent them from deserting when they reach the ports of the United States.<sup>18</sup>

It is a question open to serious doubt whether the United States has a right to use its sovereign power for such a purpose. It must, however, be borne in mind that this section of the Act has the declared purpose of

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<sup>18</sup>In an interview which I had Mr. Andrew Furuseth, relative to the purpose of this legislation which he had been so instrumental in securing, the President of the American Seamen's Union repudiated absolutely any belief in the right of a state under international law to intervene in the affairs of another. It was his opinion, based evidently upon a wide reading and study of the authorities, that every state has within its own jurisdiction, including therein its ports and harbors, the right by virtue of its sovereignty to impose whatever regulations it may judge best, except in so far as this liberty of action may have been restricted by treaties. This was the opinion expressed by Chief Justice Marshall in the case of *The Exchange* (7 Cranch, 136), in which he said:

“The jurisdiction of the nation is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself. They can flow from no other legitimate source.” (Quoted in Moore's Digest of International Law, vol. II, p. 308.)

Nevertheless, I have no doubt that humanitarian intervention will later be appealed to by organizations similar to the Seamen's Union when they perceive that the doctrine that every state may do what it chooses in its own territory can no longer be maintained. The theory of absolute sovereignty

putting an end, within American jurisdiction, to the arrest of deserting seamen. If it be established that the detention and arrest of deserting seamen is no longer in accord with the prevalent sentiments of humanity, upon this basis, the United States would find a justification for refusing its coöperation. In such an instance as this, where the United States is called upon to arrest individuals and to deliver them by force over to their foreign employers, there can be little doubt that the opinion of the United States itself in regard to the reasonableness of the use it has made of its sovereign power should be presumed to be correct. Nevertheless, it is evident that this refusal of coöperation will have a serious effect upon any foreign vessel which touches, even occasionally, at an American port, and that the foreign nations might have some cause for protest on the ground that it constituted a departure from the ancient and generally recognized procedure of all states.<sup>19</sup>

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is refuted by the statement of Mr. Root, in the Proceedings of the American Society of International Law of April 27, 1918, p. 18-19. Cf. also discussion above under § 7 and below under § 9. Some other indications of this principle of the limitation which international law places upon sovereignty in this matter of the jurisdiction over shipping will be found in Moore's Digest of International Law, vol. II, p. 273, 274, 277, 287, 290, 295, 353-4. The exemption from the local law of vessels that are driven into foreign ports by distress is another limitation which international law places upon the absolute control of the sovereign. (See Moore's Digest, vol. II, § 208, p. 339f.)

<sup>19</sup>It may be argued that the extradition and delivery of seamen is, in the United States, based upon treaty stipulations, but even so, the generally recognized obligation of coöperation for the delivery of deserting seamen, and the difficulties which a refusal of this coöperation will cause, might be said to lay upon the United States the obligation to fulfil this duty by negotiating treaties containing the appropriate provisions.

Dana, in a note to Wheaton, defines with precision the limitation which international law places upon the exercise of jurisdiction over foreign merchant vessels. He says: "The state of international law on the subject of private vessels in foreign ports... may be said to be this: So far as regards acts done at sea before her arrival in port, and acts done on board in port, by members of the crew to one another, and so far as regards the general regulation of the rights and duties of those belonging on board, the vessel is exempt from local jurisdiction; but, if the acts done on board affect the peace of the country in whose port she lies, or the persons or property of its subjects, to that extent that state has jurisdiction. The local authorities have a right to visit all such vessels, to ascertain the nature of any alleged occurrence on board. Of course, no exemption is ever claimed for injuries done by the vessel to property or persons in port, or for acts of her company not done on board the vessel, or for their personal contracts or civil obligations or duties relating to persons not of the ship's company."<sup>20</sup> (Richard H. Dana's edition of Wheaton, § 95, note 58; quoted in Moore's Digest of International Law, vol. II, p. 297-8.)

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<sup>20</sup>The provisions of the Act of June 26, 1884, which prohibited the prepayment of seamen hired in American ports was applied to foreign vessels. This was evidently a proper matter for the local authority to regulate, and did not control the foreign vessel when without the port and jurisdiction of the United States. (See Moore's Digest of International Law, vol. II, p. 307-310.)

In the case of the *Strathearn Steamship Company, Limited, v. Dillon*, (252 U. S.; printed in *American Journal of International Law*, July, 1921), the Supreme Court of the United States upheld the constitutionality of section 4 of the *Seamen's Act* of March 4, 1915. Mr. Justice Day, speaking for the court, said in the course of his opinion delivered March 29, 1920: "Upon the authority of that case [*Patterson v. Bark Eudora*, 190 U. S. 169], and others cited in the opinion therein,

## DENIAL OF TRANSIT

From the *New York Times* of July 7, 1921, we quote the following Washington dispatch:

“Despite diplomatic protest, Attorney General Daugherty has upheld the ruling of his predecessor that alcoholic liquors cannot be transported across territory of the United States in transit from one foreign country to another. The opinion was sent to the Customs Division of the Treasury to-day, and a conference of custom officials was held to determine methods of enforcing it.

“Protests against this interpretation of the prohibition amendment and enforcement law were filed some months ago by the British Embassy in behalf of Canadian citizens and by the Italian Embassy after Attorney General Palmer had rendered an opinion on February 4th that such transit of liquor was unlawful. In view of the diplomatic representations following the change of Administration, the case was reopened and hearings held at the Department of Justice.

“Considerable study of customs regulations and practices will be entailed by the decision, it was said, since other commodities moving through the same traffic lanes are not objectionable [unobjectionable] under the laws of the United States.”

An examination of the opinion of February 4, 1921, above referred to will show that the acting Attorney General did not consider the question of in how far it was the intention and the right of Congress to deny transit to certain articles. The text of the opinion as

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we have no doubt as to the authority of Congress to pass a statute of this sort, applicable to foreign vessels in our ports and controlling the employment and payment of seamen as a condition of the right of such foreign vessels to enter and use the ports of the United States.”

communicated by Acting Attorney General Frank K. Nebeker to the Secretary of the Treasury, was as follows:

“Sir: This will acknowledge receipt of your request for an opinion as to whether the Eighteenth Amendment to the Constitution and the National Prohibition Act prohibit or affect in any way ‘in transit’ shipments of liquor for beverage purposes touching at the ports of or moving through the United States when originating in and destined to foreign countries under the provisions of section 3005 of the Revised Statutes as amended by the Act of May 21, 1900 (31 Stat. 181).

“Section 3005, Revised Statutes, as amended is as follows:

“ ‘All merchandise arriving at any port of the United States destined for any foreign country may be entered at the custom-house, and conveyed, in transit, through the territory of the United States, without the payment of duties, under such regulations as to examination and transportation as the Secretary of the Treasury may prescribe.’

“Section 3 of Title II of the National Prohibition Act (41 Stat. 308) provides:

“ ‘No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor *except as authorized* in this Act...’

“By virtue of this provision any and all dealings in intoxicating liquors for beverage purposes within the jurisdiction of the United States are prohibited, except in so far as authority therefor may be found elsewhere in the Act. Nowhere therein is transportation for beverage purposes authorized; except that the prohibitions of section 20 of Title III (41 Stat. 322), which

prohibits the importation or introduction into and the manufacture, sale, transportation, etc., within the Canal Zone, are made inapplicable to liquor in transit through the Panama Canal or on the Panama Railroad. By expressly excepting transportation through the Panama Canal and on the Panama Railroad it is to be assumed that Congress intended that transportation elsewhere should be prohibited.

“By virtue of section 33 of Title II (41 Stat. 317), the possession of liquor for beverage purposes is permitted in the home, provided same is for the personal consumption only of the owner thereof and his family and bona fide guests. No other possession for beverage purposes being authorized, no other possession is lawful.

“In the absence of express authorization, in order to arrive at the conclusion that liquor for beverage purposes arriving at any port of the United States destined for any foreign country may be entered at the customhouse and conveyed, in transit, through the territory of the United States, it would be necessary to hold either that such liquor while in transit is neither possessed nor transported within the United States, or that the Prohibition Act does not apply to liquor not intended for beverage consumption within the United States. Neither of these positions is tenable. The word transport as used in the Act must be presumed to have its usual meaning, viz, to carry or to convey from one place to another, the taking up of persons or property at some point and putting them down at another (*Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196); and whether the possession during transportation be in the carrier (which I think it is) or in the owner, both transportation and possession are within the territory of the United States. In the second place the Act is not in terms limited to liquor

intended for beverage purposes within the United States. By section 1 of Title II (41 Stat. 307) 'liquor' and 'intoxicating liquor' are defined to include any liquors containing over one-half of one per cent of alcohol by volume which are fit for beverage purposes; and by section 2 the manufacture, sale, etc., of such liquors are prohibited except as authorized, regardless of the place where they are intended to be consumed. This is obvious from the prohibition upon their exportation.

"Having arrived at the conclusion that liquor in transit through the United States would be both transported and possessed in violation of the National Prohibition Act, it is not necessary for the purposes of this opinion to determine whether the procedure established by section 3005, Revised Statutes, would involve either prohibited importation or exportation.

"The National Prohibition Act applies to all the territory of the United States that is not otherwise excepted from its operation, and extends to all waters within its territorial limits, including a marine league from the shore; within those waters the manufacture, sale, transportation, possession, etc., is prohibited.

"My conclusion therefore is that the provisions of section 3005, Revised Statutes, do not apply to intoxicating liquors for beverage purposes, and that the National Prohibition Act prohibits 'in transit' shipments of such liquors touching at the ports of or moving through the United States, though same originate in and are destined to foreign countries.'" (Opinions of Attorneys General, Vol. 32, p. 419-422.)

#### PROHIBITION OF ENTRY

In the cases arising from the enforcement of the Eighteenth [Prohibition] Amendment upon foreign



vessels within the territorial waters of the United States, prohibition of entry has been interwoven with the matter of transit, as is shown by the following Washington dispatch printed in the *New York Times* of July 14, 1921:

“Protests against enforcement by customs officials of a section of the Volstead Prohibition Enforcement act which subjects to seizure foreign vessels coming within the three-mile limit with liquor aboard are reaching the State Department. Inquiries have come also from various embassies and legations, which indicate that foreign Governments are becoming concerned at threatened interference with their shipping.

“It is pointed out that a British ship bound from Halifax to Jamaica could not put into any American port for fuel or supplies without risk of seizure if she carried spirits in her cargo, under the construction which has been given to the law by the recent decision of Attorney General Daugherty, affirming an opinion of his predecessor.

“Furthermore it is expected by the shipping interests that another opinion, withdrawing the present privilege of sealing up the bar supplies on the ocean liners within the three-mile limit, is coming, in which case these vessels also would be subject to seizure if they carried liquors for the use of passengers.

“Finding that the State Department can do nothing in the matter, shipping representatives are now directing their inquiries to the Treasury and Department of Justice. It is understood that they are seeking a stay in the execution of the new orders to permit a test case in the courts.’<sup>21</sup>

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<sup>21</sup>The distinct question of the right to police marginal waters beyond the three-mile limit when necessary to prevent smug-

The New York *Times* of August 5, prints a special report from Washington which contains the following statement: "It was learned at the Department of Justice that there is an understanding among the Federal District Attorneys in coast cities that there will be no interference with liquor-carrying ships until the set case brought at the instance of the Cunard Line has been settled. This case concerns the question of 'liquor in transit,' in other words the right of a ship to touch at an American port if her bar is sealed when she enters the three-mile limit. The Department of Justice will aid the expedition of this suit and will throw no legal obstacles in the way of its completion, instead endeavoring to bring it to a conclusion as soon as possible."

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gling is involved in the recent (Aug. 1, 1921), seizure of the British schooner, the *Henry L. Marshall*, outside the three-mile limit in the vicinity of Atlantic City.

This schooner, according to the account in the New York *Times*, Aug 3, 1921, made a practice of lying outside the three-mile limit and selling liquor to purchasers who came out in motor boats. The captain, Eris Anderson, was reported as having boasted that "these Federal men can't do anything to me but make it uncomfortable." Captain Anderson was also quoted "as having admitted making a prior trip to Montauk Point with a cargo of liquor. On this trip he had 2,000 cases of liquor he was said to have sold to visitors."

According to the *Times*, Assistant United States District Attorney Clark said:

"It is our position that we have a right to seize a vessel outside of the three-mile limit if there is evidence of a conspiracy to violate our customs laws and the Volstead act. While the actual sale of liquor outside of the three-mile limit is not in itself illegal, yet if it can be shown that persons from this country go out there to buy contraband then conspiracy has been established."

The New York *Times* of August 5, gives further particulars and states that the members of the crew of the *Marshall* were held in \$5,000 bail.

The prohibition or restriction, upon humanitarian grounds, of the entry of goods, is alluded to by Stapleton, who writing in 1866 complains of the action of the British Parliament:

“By the Act slave-grown sugar was admitted into English markets on equal terms with sugar produced by free labor.

“The effect of this has been, as predicted at the time, that most of our West Indian colonies have been ruined: and, as was strongly pressed by the late Sir Robert Peel as a certain result, Cuba and other slave-trading States have carried on the slave trade with previously unexampled vigor, and flourished under its operation.” (A. G. Stapleton: *Intervention*, 1866, p. 265-6.)

In all these instances in which the state has made use of its authority to exclude or to regulate foreign commerce for the purpose of enforcing regulations of a humanitarian nature, there is evidently danger of a serious conflict between the two States.

On the one hand the local authority has a right to insist that the rights of aliens and foreign commerce shall not be unreasonably used within its jurisdiction to thwart or prevent the enforcement of all reasonable laws.

But on the other hand the local authorities should not impose unreasonable conditions upon aliens or shipping temporarily within its jurisdiction.

Where it is merely a question of preventing the advent of foreigners from interfering with the due enforcement of the local law, there is usually little difficulty in reaching some reasonable interpretation or adjustment. But when the object of the territorial sovereign is to make use of transit or temporary sojourn as a leverage to compel foreigners and foreign shipping to modify their own regulations, the act ceases to

be one of self-defense and sovereignty and becomes virtually either an act of intervention or of interference.

Under ordinary circumstances such an act would be an interference which other independent states would not tolerate and it would be corrected by recourse to appropriate measures of retaliation.

When, however, the purpose is humanitarian, so that the act in question may be defended upon the ground that it is necessary for the protection of the interests of all the states and of mankind in general, the practice of states shows this to be a justification. The question is however new and the limits of the conflicting rights have not as yet been described.

### § 9. INTERNATIONAL POLICE REGULATION<sup>22</sup>

The powers which control any society must ever be on the watch to protect it from danger. It is not possible to define exactly beforehand the nature of the

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<sup>22</sup>The various kinds of action which are in the nature of international police, or closely related to it may be classed as follows:

(1) Action undertaken to compel the observance of the law of nations. It is in this sense that we have used International Police as the heading of this chapter. (For the use of police in this sense see Westlake: Vol. I, p. 317.)

(2) Action undertaken to prevent the violation by a state of the law when such an occurrence seems likely, especially when the penalties imposed after the commission of the offense are inadequate to protect the interests of society. This is really an extraordinary procedure for the enforcement of the law, just as in our municipal law we have injunction to prevent the violation of the law when the court believes that the ordinary remedial processes are inadequate. Hall (International Law, 4th ed., § 95, p. 309 note) calls this "preventive interference."

(3) "International Police Regulation," which is closely related to the power of prevention and to every exercise of a police power, is the action of making and enforcing regulations

peril which may arise. In international, as in national affairs, those in authority must be allowed to exercise a wide discretion over life and property when they believe it necessary for the protection of the common safety. This exercise of discretion is called police

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necessary to prevent future violations. The publication of such regulations gives to all due notice and thereby tends to reduce the inconvenience and arbitrary character of the force which it may subsequently be necessary to employ.

(4) "Police patrol" or "international police patrol" is the preventive action which one or more states take to forestall and effectively to punish violations of international law by individuals. Such, for example, are the fisheries police of the North Sea (see Paul S. Reinsch: *Public International Unions*: Ginn and Co., Boston, 1911, p. 62); the protection of the submarine cables (*Ibid.*, p. 63); African Slave Trade and Liquor Traffic (*Ibid.*, p. 64); the repression of the white slave trade (*Ibid.*, p. 64); the South American police convention (*Ibid.*, p. 66).

(5) Action for the purpose of restricting the exercise by a state of certain of the rights it ordinarily enjoys when such liberty is considered dangerous to the safety of all the states. This last is perhaps the most characteristic form of the exercise of police power and is the action in international relations with which we are in this section principally concerned. When necessary to the safety of all the states, the exercise of police power justifies the curtailment or even denial of any of the rights of a state and its citizens, and in theory would go even to the limit of justifying the annihilation of a community, if such extreme action could be shown to be the only means to preserve international society. The exercise of this police power is in practice very closely associated with the ordinance power above referred to as police regulation, and for this reason we employ the more usual term of International Police Regulation for our section heading instead of International Police Restriction.

In our municipal [national] law, "police" is often used to designate the minor matters which are left to lesser, i. e., "police officials." In this sense, we have "police ordinances" and "powers of police." But even in this field, we perceive the essential or underlying idea of a power which cannot be completely regulated and provided for in advance by the superior authorities.

power and justifies any curtailment of the rights which are ordinarily enjoyed by the separate states, provided the action to be taken seems reasonably necessary for the protection of the common safety. The determination of what is necessary is perforce left to the decision of those in authority. In international affairs this means that the decision must be left to those powers who exercise a paramount direction over world affairs,—that is, to the great world powers. Sometimes they act in concert. Each of the world powers also has a particular region outside of Europe where it often exercises this police power as if by a tacit mandate from the other powers.<sup>22a</sup>

The aim of the political system of the nations is well expressed in Senator Fessenden's definition, intended, it is true, to apply only to the United States (Life of Fessenden, Vol. I, p. 52): "The great principle of their political system," he said, "was the largest liberty of thought and the greatest freedom of individual action consistent with social order."

Although we define police action as a justifiable curtailment of rights, we might in almost all the instances in which it is applied consider it rather as the prevention of that abusive use of a recognized right which by reason of the abuse thereof becomes unlawful.

Westlake, denying that the right of sovereignty permits a belligerent to lay even in his own territorial waters floating mines which do not become innocuous as soon as they get loose, remarks that "...the right of a state in the waters subject to its sovereignty can certainly not rank higher than that of a private owner in the land or water which is his property," and he

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<sup>22a</sup>The executive action of the great powers in concert or acting separately within a particular region or sphere of influence is more fully discussed in the following section. (§ 10).

adds, "But no principle is more firmly established in the science of law than that which says to an owner *sic utere tuo ut alienum non laedas* [so use thine own as not to injure another]." (International Law, Vol. II, p. 313.)

Phillimore begins his chapter on Intervention with the following observation: "In all systems of private jurisprudence, provision is made for the placing upon the abstract right of individual property such restrictions as the general safety may require. The maxim, '*expedit enim reipublicae, ne quis sua re male utatur*,'<sup>23</sup> belongs to the law of all countries (Inst. I, VIII, 2). The Prætorian Interdict of the Roman, the Injunction of the English Law, give effect to this principle by *preventing* the mischief from being done, instead of endeavoring to remedy it when done. Some analagous right or power must exist in the system of International Jurisprudence." (Phillimore, 1 ed., Vol. I, 1854, §§ 386-7, p. 433.)

A good illustration of this preventive action was the exclusion of the Bonapartes from the throne of France. (Angeberg: Congrès de Vienne, II, p. 1183-4. Cf. Westlake: International Law, vol. I, p. 318; Stapleton: Intervention, p. 139.)

In his notes to the passage just quoted, Phillimore gives references to the "Digest" of the instances where property is subjected to restriction on account of the general good. He also gives a quotation from Ahrens (Cours de Droit naturel ou de Philosophie du Droit, Brussels, 1844, p. 296), which when translated

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<sup>23</sup>The English translation is: "And this decision is just, as the welfare of the State demands that no one should make a bad use of his own." (Institutions of Gaius and Justinian, translated by T. Lambert Means, London, 1882, p. 269.)

Cf. works of Edmund Burke, Boston, Little, Brown and Co., 1894, Vol. 5, p. 321-322, Letters on a Regicide Peace, Letter I. See also Hall: International Law, 4th ed., § 95, p. 309 note.



reads: "Every right has its limits: it is limited by the corresponding rights of all the members of a society."<sup>23a</sup>

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<sup>23a</sup>It is the purpose of intervention to vindicate the rights of the other states when any state takes advantage of its independence to use its rights in an abusive manner, that is without regard to the interests of its neighbors. The situation when the abusive action endangers a particular state is discussed below under § 16, Self-Preservation. We are here concerned only with abuses which injuriously affect all of the states. Grotius shows in many of the passages we quote in this section and elsewhere (see § 7) that he always placed the rights and interests of international society above those of states considered separately.

The judicious Hooker writing about 1592 set forth in a remarkable passage the supremacy of international law:

"Now, besides that law which simply concerneth men, as men, and that which belongeth unto them as they are linked with others in some sort of Politique Society, there is a third kinde of law which toucheth all such several bodies Politique, so far forth as one of them hath publique commerce with another. And this third is the Law of Nations.... The strength and vertue of that law is such, that no particular nation can lawfully prejudice the same by any their several laws and ordinances, more than a man by his private resolutions the law of the whole Commonwealth or State wherein he liveth. For as civil law, being the act of the whole body Politique, doth therefore over-rule each several part of the same body; so there is no reason that any one Commonwealth of itself should, to the prejudice of another, annihilate that whereupon the whole world hath agreed." (Eccl. Policy, 1, 10, as quoted by Professor J. S. Reeves in *American Journal of International Law*, July, 1921, Vol. 15, p. 365.)

Günther, one of the founders of the positive system of international law, writes: "The closer union in which the European nations stand today, for they may certainly be considered as members of a great and equal society—especially in matters which concern the common interests—makes it necessary in accordance with the fundamental principles of international law (*Freiwilligen Völkerrecht*) that each nation in its conduct observe its obligation to international society and refrain from using the liberty it enjoys therein in such a manner as obviously to disturb the peace and security of this great society, or to give the other members any reasonable ground for



But there are, as we have said, instances where police action is necessary, irrespective of any abuse of a right. In our municipal law, the fire marshal may dynamite any house when in his opinion it is necessary to save the city.<sup>24</sup>

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mistrust or apprehension." (Günther: *Völkerrecht* Vol. I, 1787, p. 282; cf. *ibid*, p. 295-6.)

When two or more nations engaged in war violate the fundamental rules recognized by international law as governing the conduct of hostilities, there is, as we have seen above (§ 7), a just ground for intervention to vindicate the law of nations. And again, when the manner of conducting a civil war is so barbarous as to shock neighboring nations and to serve as a reproach to civilization, third states have, as we have also seen (§ 8, c.), a right of intervention upon the ground of humanity. There is, however, still another ground of action, namely: when an unnecessary war between two independent states or a civil war unreasonably prolonged threatens the peace and security of international society, such conduct on the part of the warring states may rightfully be regarded as an instance of the abusive use of their liberty and their sovereignty. In accordance with the practice of states, the danger which such an abusive action causes to the security of states is sufficient justification for intervention.

Karl Heller (*Die Frage der Zulässigkeit der Völkerrechtlichen Intervention*, 1915, p. 6) says that Glafey is the first to observe that "when the warring parties welter in blood without end a third may intervene with arms and attempt to impose peace by force." (Ad. F. Glafey: *Recht der Vernunft*, 1739, Bk. 6, Chap. I, p. 97.)

Professor Kebedgy recognizes the justification of such intervention to prevent any state from using its sovereignty in a manner so abusive as to endanger the security of the other states. Quoting Professor Arntz' letter to Rolin Jaequemyns (*revue de droit international et de législation comparée*, Vol. 8, 1876, p. 674) he gives as an illustration the case of a state which possessed of the monopoly of a sovereign remedy against a widespread malady should refuse to allow the drug to be exported for the benefit of other nations (Kebedgy: *Intervention*, p. 86).

<sup>24</sup>The action of the powers to compel Holland to desist, when she was at the point of subjugating the revolting Belgian Provinces, was a curtailment of the sovereign right of the

President Angell, in his Phi Beta Kappa address, asks: "May not the great powers, if they see a small

Netherlands to settle its own internal affairs. Assuredly there never was a greater abuse of force than that employed by France and England to compel the Dutch to submit unless the coercive measures were justified by the superior needs of European peace. The moment was a critical one and the intervention was successful in preserving Europe from another general war which was seriously threatened. Upon this ground the action of the European concert has generally been justified (see Pitt Cobbett: *Cases on International Law*, 3 ed., Vol. I, p. 347-8; cf. Rossi's remarkable analysis of the principles applicable to this instance in *Archives de droit et de legislation*, Brussels, Vol. I, 1837, p. 369-70). In the protocol of February 19, 1831, the great powers assembled in conference at London, formulated the principle which was the justification of their united action: "Every nation" declares the protocol "has its separate rights, but Europe also has rights given her for the maintenance of the peace and order of society." (Translated from LeClerq: *Traité de la France*, Vol. 4, p. 15. The French original reads: "Chaque nation a ses droits particuliers; mais l'Europe aussi a son droit; c'est l'ordre social qui le lui a donné.")

Professor J. B. Moore gives the following brief account of the protest of Great Britain and France at the blocking of Charleston harbor. Although Secretary Seward wrote Minister Dayton: "In making these explanations, I must not be understood as conceding to foreign states a right to demand them" (*Diplomatic Correspondence*, 1862, p. 316), it might be considered that by making explanations he did, in fact, to some extent at least, concede the right. Professor Moore writes:

"February 14, 1862, Lord Stanhope, in the House of Lords, called attention to the report that a second squadron of ships laden with stone was about to be sunk by the United States in Maffit's channel at Charlestown, South Carolina. He observed that the sinking of large ships laden with stone on banks of mud at the entrance of a harbor could only end in its permanent destruction and was not justified by the laws of war, and declared that the British Government was well entitled to protest against the act. Earl Russell replied that he considered the destruction of commercial harbors a most barbarous act, that the French Government took the same view, and that they had decided to remonstrate with the Government of the United States. On February 28, Earl Russell

power pursuing a policy dangerous to the general peace of all or of several, justly intervene to prevent it,

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stated that he had received a dispatch from Lord Lyons to the effect that Mr. Seward had stated that there had not been a complete filling up of Charleston Harbor and that no more stones would be sunk there.

“The subject had been discussed between Mr. Seward and Lord Lyons, and Mr. Seward had made explanations to the effect that artificial obstructions in the channels of rivers leading to ports had been regarded as an ordinary military appliance of war; that it was not conceived that such obstructions could not be removed; and, that, upon the termination of the war, there would be cast upon the Government the responsibility of improving the harbors of all the States. After these explanations were given, Mr. Seward ascertained and stated that between the channels at Charleston which had been obstructed there still remained two—the Swash channel and a part of Maffit’s channel—neither of which had been nor was intended to be artificially obstructed and which were to be guarded by the blockading naval forces. Mr. Seward observed that, in making these explanations he was not to be understood as conceding to foreign states a right to demand them. They were accepted by the French, as well as by the British Government.” (Moore’s Digest of International Law, Vol. 7, p. 855-6, § 1286, Professor Moore gives references to authorities and to other instances in which the question of the right to obstruct channels has arisen.)

For the discussion of the justification of intervention to preserve the Balance of Power on the ground of the right of the society of states to curtail the rights of the separate states for the preservation of peace, see discussion in § 17; cf. also Günther: *Völkerrecht*, Vol. I, p. 333, 358, 359-60; cf. *ibid* p. 298; Gentz, *Fragmente aus der neusten Geschichte des Politischen Gleichgewicht in Europa*. St. Petersburg, 1806.

Kamptz in his partisan effort to sustain the right of the Holy Alliance to interfere in the internal affairs of the states of Europe for the purpose of preventing constitutional changes by means of a revolution takes the ground that they have the right to prevent changes which endanger “the peace and security of the community of European states or the well recognized rights of other states” (*Völkerrechtlicher Erörterung des Rechts der Europäischen Mächte in die Verfassung eines Einzelnen Staats sich zu mischen*, Preface p. VII). A little further along he declares such action to be “as necessary and beneficial for the great community of states as is police in each separate state” (*Ibid* p. VIII-IX).

as any government checks the violence of one of its own citizens?"

It is evident that a power so vast is in danger of being abused. If it is unwisely used to interfere unnecessarily with the independence of the less powerful sovereign states, it will constitute a menace to society no less serious than that which it is intended to ward off.

With a view to preventing abuse, it has been proposed to restrict the exercise of this power to collective action, but just as in the case of humanitarian intervention the suggestion is full of difficulties, such as the delay inevitable in organizing any collective action. Furthermore the tendency of states to roll off the burden of police action upon the state whose security is more directly threatened cannot easily be overcome. The state immediately threatened cannot delay action indefinitely, and other states sometimes affect indifference, feeling secure in the knowledge that their interests will be protected by the state most directly concerned.

Hall (4th ed., § 95, p. 308) intertwines his discussion of international police with humanitarian intervention, but he selects for favorable comment two instances of international police carried out by collective action: the formation of Belgium (1833), and the arrangements adopted by the Congress of Berlin (1878). "Still," he concludes, "from the point of view of law, it is always to be remembered that states so intervening are going beyond their legal powers. Their excuse or their justification can only be a moral one." President Angell (Phi Beta Kappa address on the European

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The erroneous conclusions which Kamptz draws and the abusive application of this principle by the Holy Alliance in no way affects the correctness of the principle. It does, however, indicate the danger of abuse which is inherent in it.

Concert, p. 9), has drawn attention to the error into which Hall falls. After repeating the extract given above, Dr. Angell observes: "I venture to ask in respect to the last two sentences I have quoted from Mr. Hall whether, if the acts of intervention under consideration in any given case have an excuse or justification which is a moral one, the states performing them can be going beyond their legal powers, provided by the phrase 'legal powers' we mean powers allowable under international law. For how do we determine what powers are thus allowable except by finding the moral sense of nations as expressed in their usages? and the moral sense of Europe appears plainly to be that the great powers may infringe upon the independence and equality of the minor states, if such infringement is essential to the preservation of the general good. If such infringement is justifiable on moral grounds, is it not by that fact to be regarded as justifiable in international law?"<sup>25</sup>

It is a matter for regret that the writers on international law have not examined International Police Action with the care the importance of the subject warrants.

The most frequent application of "international police" is intervention to prevent an unnecessary war or to bring a conflict to an end by imposing a settlement. A well known instance was the intervention of Great Britain and France to compel Holland to acquiesce in the settlement which the powers had reached relative to the separation of Belgium. (Pitt Cobbett: Cases, 3 ed., vol. I, p. 347.) Again in 1886 the powers blockaded the coasts of Greece to prevent that state

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<sup>25</sup>We must agree that Dr. Angell's criticism of Hall is well founded, but since Hall's remarks were mainly intended to apply to humanitarian intervention we have discussed his statement in a footnote of the preceding section (§ 8).

from making war on Turkey. (Ibid, p. 348.) Similarly the powers intervened to save Greece from the victorious Turks when they imposed the peace settlement of Sept. 18, 1897. (Ibid, p. 348.)

Provisions in regard to the limitations of armament and the guarantees of the independence and integrity of states when adopted for the preservation of international peace and security (see § 17), are instances of international police.

The justification of President Roosevelt's intervention in favor of Panama rests upon the principles we have been discussing. Colombia as every one knew could not build the canal herself and might therefore be required to permit some other power or powers to undertake the task which was so manifestly beneficial to the commerce of all the nations.<sup>26</sup>

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<sup>26</sup>“By the rules of right and justice universally recognized among men and which are the law of nations, the sovereignty of Colombia over the Isthmus of Panama was qualified and limited by the right of the other civilized nations of the earth to have the canal constructed across the Isthmus and to have it maintained for their free and unobstructed passage.” (Extract from address by Hon. Elihu Root on “The Ethics of the Panama Question” before the Union League Club of Chicago, Feb. 22, 1904, printed in Senate Document, 471, 63rd Congress, 2nd Session, p. 39.)

This obligation is based upon the fundamental principle that all of the nations are required to coöperate for the purpose of facilitating international commerce. This was the principle which justified the United States and the other powers in forcing their way into Japan and in compelling her to negotiate and sign treaties providing for commercial relations. The right to use international rivers which pass through another state rests upon the same basis. (Cf. Woolsey: International Law, 6th ed., § 62, p. 79-83.)

Grotius clearly recognizes the right to use the territory of another state. He justifies the right of transit for the purpose of traffic with a remote nation, or in the prosecution of a just war. “The reason,” he says, “is the same as above; that ownership might be introduced with the reservation of such a use, which is of great advantage to the one party and of no

Colombia was sovereign over the territory in question, but sovereignty does not, as we have seen, permit a state to make an abusive use of its rights. Undoubtedly, Colombia would have had the right to attempt in the first place to build the Canal herself, and if she could not or would not do this, she had a right to demand that any power undertaking the work should compensate her reasonably for the territory required and for any damage to her possessions.

Instead of adopting this course, the Colombian Government kept putting obstacles in the way of the United States, who was seeking an agreement with Colombia in order that she might acquire upon reason-

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disadvantage to the other; and the authors of ownership are to be supposed to have intended this." (Grotius, Bk. II, ch. II, XIII, § 1, Whewell's translation, vol. I, p. 243; cf. also Vattel, Bk. II, § 123, Carnegie translation, p. 150.) Whewell states: "Gronovius in a long note gives very strong reasons why this right of transit cannot be held, and cases in which it has been negatived." But this objection really applies only to warlike transit, which is now recognized as a violation of neutrality. At the time when Grotius wrote, military transit was recognized and was a good example of the limitation of sovereign right for the benefit of what was then considered the interest of all the states. The principle upon which Grotius then based the right of military transit has not disappeared because this particular application has become antiquated.

In the same chapter Grotius sets forth his theory of the common right which all men have in property which has become private. Even those who do not accept this theory in its entirety will find it a valuable argument in the support of the superior right of the community over the property held by the separate members. (Bk. II, ch. II, I to XI, Whewell's Translation, vol. I, p. 237-240.)

The United States was justified in intervening to secure the abolition of the Danish Sound Dues. (See Woolsey: International Law, 6th ed., p. 77-8.) This is a good example of the principle, even though the Danish vested interests were recognized and purchased in the form of a payment, in return for which Denmark was obligated to maintain the necessary lighthouses, etc.



able terms Colombia's acquiescence in the undertaking to build the canal. This abusive action of the Colombian Government would have amply justified the United States in seizing the needed territory. In that event the additional cost of the military operations would justly have been chargeable to Colombia's account and any balance left after deducting these costs from the value of the land seized would have belonged to Colombia.

The action of the Roosevelt administration was not so drastic. The same legitimate result was attained by recognizing the Republic of Panama and signing with that country a satisfactory treaty for the construction of the Canal. If Colombia had not given the United States just ground for intervening, the premature recognition of Panama and the policing of the Isthmus to prevent Colombia from landing troops and suppressing the revolt would have been unjustifiable acts of interference. As it was, however, they were only milder means of enforcing the right of the United States acting for all the states to build the Canal.

In enforcing this right, the United States was acting as the agent or mandatory of all the states of the world. So acting, President Roosevelt had a right to employ such force as was reasonably necessary to attain the legitimate purpose in view. The premature recognition of the Republic of Panama, which was itself an act of intervention, and the additional act of intervention to prevent the suppression of the revolt, were as we have just said milder measures than the direct seizure of the territory and the forcible overcoming of Colombia's resistance.

In the discussion of this question, much emphasis has been laid on the obligation assumed by the United States in article 35 of the Treaty of 1846 to guarantee



the integrity of Colombia. This obligation applied only to protect Colombia from foreign aggression.<sup>27</sup>

In the preceding discussion, we have been considering the question of the Canal as though Colombia had been completely sovereign over the territory, through which it was to pass. This was not the case. Over the Isthmus the United States had acquired, with the assumption of the burden of police certain rights of supervision.<sup>28</sup>

This supervisory control did not give the right to appropriate the Canal Zone, but it gave the supervisory state a strong justification for whatever action might be reasonably necessary for the complete fulfilment of the trust to which it was committed.

The United States has been accused of instigating the Panama revolution from which it so greatly benefited. This mere assertion has divided the country somewhat along the line of political cleavage between

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<sup>27</sup>For an extremely able and thorough discussion of the Treaty of 1846, and Article 35, which contains the provisions relative to the guaranty of transit, see William C. Dennis: *The Panama Situation in the Light of International Law*, in *American Law Register* (Published by the Department of Law, University of Pennsylvania), vol. 52, May, 1904, p. 265-306. Cf. Travers Twiss: *The Law of Nations*, Vol. I, § 231, p. 367-379, where the nature of a treaty of guarantee is considered.

<sup>28</sup>The effects of this supervision are considered in the following section. The diplomatic correspondence relative to the Isthmus shows the nature of the American supervision. The United States had assumed, with the acquiescence of Colombia, onerous obligations for the police of the territory in question and in so doing, the United States was fulfilling obligations which were Colombia's, but from which Colombia was in a certain measure excused by her weakness. This police, or supervisory power, over the Isthmus for the purposes of international commerce gave to any action to facilitate this commerce (as the building of the Canal) the benefit of a *prima facie* presumption that it was justifiable. Another power, intervening for the same laudable purpose, would not have been entitled to this same presumption.

the two camps of those who supported President Roosevelt and his policies on the one hand, and those who disapproved on the other. No shred of evidence has ever been adduced to show that the United States did instigate the revolution.<sup>29</sup>

The failure to understand the true nature of police action has led many well-meaning individuals, some of them jurists of high standing, to condemn the action of President Roosevelt. They have seen no further than

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<sup>29</sup>It would seem that this wide-spread opinion is based in part upon Roosevelt's statement in his speech to the students of the University of California, at Berkeley, Cal., March 23, 1911: "I am interested in the Panama Canal because I started it. If I had followed traditional conservative methods I should have submitted a dignified state paper of probably two hundred pages to the Congress and the debate would have been going on yet. But I took the canal zone, and let Congress debate, and while the debate goes on the canal does also."

In his Autobiography Roosevelt has described his conduct more fully and exactly:

"From the beginning to the end our course with Colombia was straightforward and in absolute accord with the highest standards of international morality. Criticism of it can come only from misinformation, or else from sentimentality which represents both mental weakness and a moral twist. To have acted otherwise than I did would have been on my part betrayal of the interests of the United States, indifference to the interests of Panama, and recreancy to the interests of the world at large. Colombia had forfeited every claim to consideration; indeed, this is not stating the case strongly enough; she had so acted that yielding to her would have meant on our part that culpable form of weakness which stands on a level with wickedness. As for me personally, if I had hesitated to act and had not in advance discounted the clamor of those Americans who have made a fetish of disloyalty to their country, I should have esteemed myself as deserving a place in Dante's Inferno beside the faint-hearted cleric who was guilty of "il gran rifiuto." (Extract from the Autobiography of Theodore Roosevelt and printed in Senate Document No. 471, 63rd Congress, 2nd Session, p. 61.)

the right of Colombia as the sovereign of the Isthmus to do with it as she liked."

Those who entertain such sentiments have urged and supported the agreement to pay Colombia \$25,000,000 indemnity; but with a strange contradiction this payment is not to be accompanied with any apology for the offense which it acknowledges.

Assuredly it is hard to defend such a payment. If the United States recognizes that it was at fault, it should apologize. If there be a reasonable doubt of the matter, arbitration is an honorable solution.

In the absence of any juridical or any ethical obligation to compensate Colombia, a donation of \$25,000,-

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"Senator Cullom relates how President Roosevelt sent for Senator Hoar when he was present to discuss with him the question of the Panama Canal.

"The President wanted the Senator to read a message which he had already prepared in reference to Colombia's action in rejecting the treaty and the canal in general; which message showed clearly that the President had never contemplated the secession of Panama, and was considering different methods in order to obtain the right of way across the Isthmus from Colombia, fully expecting to deal only with the Colombian Government on the subject. The President was sitting on the table, first at one side of Senator Hoar, and then on the other, talking in his usual vigorous fashion, trying to get the Senator's attention to the message. Senator Hoar seemed adverse to reading it, but finally sat down, and without seeming to pay any particular attention to what he was perusing, he remained for a minute or two, then arose and said:

" 'I hope I may never live to see the day when the interests of my country are placed above its honor.'

"He at once retired from the room without uttering another word, proceeding to the Capitol.

"Later in the morning he came to me with a typewritten paper containing the conversation between the President and himself, and asked me to certify to its correctness. I took the paper and read it over, and as it seemed to be correct, as I remembered the conversation, I wrote my name on the bottom of it. I have never seen or heard of the paper since." (Cullom, Shelby M.: Fifty Years of Public Service, p. 212-213.)

000 will be open to misinterpretation, and since the honor of the United States is concerned it would be neither wise nor just.<sup>31</sup>

Discussing in an address before the Union League Club of Chicago the "Ethics of the Panama Question," Mr. Root did more than cover the ethical grounds of justification for President Roosevelt's act. He also laid down the fundamental juridical principle which governs all action of a similar nature. Mr. Root said in part:

"It frequently happens in affairs of government that most important rights are created, modified, or practically destroyed by gradual processes, and by the indirect effect of events; and that only an intimate knowledge of the process enables one to realize the change until some practical question arises which requires everyone interested to study the subject. If the typical New Zealander, ignorant of our political history, were to read our Constitution and laws, he would suppose that a presidential elector in the United States is entitled to exercise freedom of choice in his vote for President, and he would be quite certain that we were guilty of gross injustice in the treatment which we should certainly accord to an elector who voted for anyone but the candidate of his own party. In forming this judgment, he would be misled by the form and ap-

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<sup>31</sup>The apparently equitable basis upon which one opinion in support of the treaty rests, is that the United States should not by the exercise of force directly, or by indirection, gain at the expense of Colombia. But Colombia rejected the basis of reasonable compensation, and it may well be questioned whether other obstreperous states should be encouraged in an unreasonable resistance to action for the common good, as they would be if they could in last analysis rely upon the power that had been resisted to make good the cost. Such a practice would not tend to support and develop the settlement of international controversies upon the basis of juridical principles.

pearance of things which he found upon the statute book, and would misjudge a people who were acting in accordance with the substance and reality of things as they knew them to be. In the same way, they are in error who assume that the relations of Colombia to the other nations of the earth as regards the Isthmus of Panama were, in truth, of unqualified sovereignty and right of domestic control according to her own will, governed and protected by the rules of international law, which describe the attributes of complete sovereignty; that the relations of Colombia to the people of Panama were, in truth, those appearing in the written instrument called the Constitution of Colombia; or that the rights and duties of the United States in regard to the Isthmus were confined to the simple duty of aiding Colombia to maintain her control over the Isthmus, and the simple right to ask from Colombia privileges which that country was entitled to grant or withhold at her own pleasure.

“The stupendous fact that has dominated the history and must control the future of the Isthmus of Panama is the possibility of communication between the two oceans. It is possible for human hands to pierce the narrow 40 miles of solid earth which separate the Caribbean from the Bay of Panama, to realize the dreams of the early navigators, to make the pathway to the Orient they vainly sought, to relieve commerce from the toils and perils of its 9,000 miles of navigation around Cape Horn through stormy seas and along dangerous coasts with its constant burden of wasted effort and shipwreck and loss of life, and to push forward by a mighty impulse that intercommunication between the distant nations of the earth which is doing away with misunderstanding, with race prejudice and bigotry, with ignorance of human rights and opportunity for oppression, and making all the world kin.

“Throughout the centuries since Philip II sat upon the throne of Spain, merchants and statesmen and humanitarians and the intelligent masses of the civilized world have looked forward to this consummation with just anticipations of benefit to mankind. No savage tribes who happened to dwell upon the Isthmus would have been permitted to bar this pathway of civilization. By the universal practice and consent of mankind they would have been swept aside without hesitation. No Spanish sovereign could, by discovery or conquest or occupation, preempt for himself the exclusive use of this little spot upon the surface of the earth dedicated by nature to the use of all mankind. No civil society organized upon the ruins of Spanish dominion could justly arrogate to itself over this tract of land sovereignty unqualified by the world’s easement and all the rights necessary to make that easement effective. The formal rules of international law are but declarations of what is just and right in the generality of cases. But where the application of such a general rule would impair the just rights or imperil the existence of neighboring States or would unduly threaten the peace of a continent or would injuriously affect the general interests of mankind, it has always been the practice of civilized nations to deny the application of the formal rule and compel conformity to the principles of justice upon which all rules depend. The Danubian Principalities and Greece and Crete, and Egypt, the passage of the Dardanelles, and the neutralization of the Black Sea are familiar examples of limitations in derogation of those general rules of international law which describe the sovereignty of nations.” (Extract from address by Hon. Elihu Root on “The Ethics of the Panama Question,” before the Union League Club of Chicago, Feb. 22, 1904, printed in Senate Document 471, 63rd Congress, 2nd Session, p. 37-38.)

The subject of supervisory or paramount control is considered in the following section, but in relation to the question of Panama we may here appropriately quote a letter which President Roosevelt on January 18, 1904, addressed to Cecil Arthur Spring-Rice, at the British Foreign Office, London:

“I have been having most interesting times. I have succeeded in accomplishing a certain amount which I think will stand. I believe I shall put through the Panama treaty (my worst foes being those in the Senate and not those outside of the borders of the United States) and begin to dig the canal. It is always difficult for me to reason with those solemn creatures of imperfect aspirations after righteousness, who never take the trouble to go below names. These people scream about the injustice done Colombia when Panama was released from its domination, which is precisely like bemoaning the wrong done to Turkey when Herzegovina was handed over to Austria. It was a good thing for Egypt and the Soudan, and for the world, when England took Egypt and the Soudan. It is a good thing for India that England should control it. And so it is a good thing, a very good thing, for Cuba and for Panama and for the world that the United States has acted as it has actually done during the last six years. The people of the United States and the people of the Isthmus and the rest of mankind will all be the better because we dig the Panama Canal and keep order in its neighborhood. And the politicians and revolutionists at Bogota are entitled to precisely the amount of sympathy we extend to other inefficient bandits.” (Theodore Roosevelt and His Time, shown in his own letters, by Joseph Bucklin Bishop, New York, 1920, Vol. I, p. 297.)

In most of the instances of recourse to international police power, it will be found that the action is taken in

regard to some state over which there has grown up in some sort an habitual control as was the case in regard to the Isthmus of Panama.

### § 10. SUPERVISION

International law is based upon the principle of territorial sovereignty and looks to those communities which have the ability to maintain their independence for the enforcement of international law within the jurisdiction over which they are recognized as sovereign. The states which fulfil this expectation are recognized as independent and as full members of the society of nations. But international relations are complicated by the presence of a considerable number of states who, notwithstanding the formal recognition of their full legal status as members of the society of states, are not in fact always able to fulfil satisfactorily the requirements which international law imposes upon them, either because they are unable to exact from other states a due regard for their international rights or because within their own jurisdiction, they are unable to maintain order and to secure for aliens the peaceful enjoyment of the rights to which they are entitled.<sup>32</sup>

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<sup>32</sup>No entirely satisfactory term can be found to express the relationship considered in this section. Various words have been employed, such as "hegemony," "primacy," "police jurisdiction" (Bernard: *Non-Intervention*, p. 24), "tutelage" (*ibid*, p. 8; cf. Moore: *Asylum in Legations*, *Political Science Quarterly*, Vol. 7 (1892) p. 16), "surveillance" (A. H. Snow: *The Question of Aborigines in the Law and Practice of Nations*, p. 21, 27), "next friend," "international patron" (*ibid*, p. 21), "international guardianship" (*ibid*, p. 21). "Client State" (Lawrence: *Principles*, 4th ed., § 39, p. 66, § 64, p. 126).

Professor Bernard well depicts this condition of statehood: "All men are not in fact completely free, nor are all states



It is evident that the neighboring states suffer the principal inconvenience from this situation. Their extensive relations with the state in question oblige them more frequently to have recourse to force to secure redress for the violation of their rights, and they are constantly a prey to apprehension lest some powerful state, claiming to seek redress, acquire a dangerous political control over these adjacent territories. States of the second rank are not able to offer any effective opposition to such designs, but if amongst the neighbors of the delinquent state (incapacitated state), there be one of the first rank, it will never permit a distant rival to establish its influence and control so near at hand. But it is difficult to interfere with the action of any state seeking reasonable redress, unless the inter-

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completely sovereign. There may be states in name, which are not such in reality—Governments which labor under an incurable incapacity to govern, and which a makeshift policy keeps alive under an irregular and capricious tutelage, in order to avoid, on the one hand, the embarrassments which would be occasioned by their fall, and to prevent, on the other, as far as possible, (for such efforts often come too late,) atrocious barbarities and gross oppressions. To such cases the principle does not apply, and the hopeless infirmity which makes interference necessary is an evil that we have to deal with in the best way we can. Again, there is the anomalous thing called a 'Protected State'—a relation which almost necessarily involves more or less of falsehood, in which you have on the one side a galling or corrupting dependence, and, on the other, power without definite responsibility and responsibilities without effective control." (Mountague Bernard: *The Principles of non-intervention* (1860), p. 7-8); Westlake's (*International Law*, I: 121-144) study of "Colonial Protectorates" and "Spheres of Influence" is also of interest.

"Supervision" seemed on the whole to best express the relationship. I have recently been gratified to find that the late Alpheus H. Snow used this same designation in the project of a code of the Law of Nations published in the proceedings of the American Society of International Law (1911, p. 330).

fering neighbor state is willing to assume a certain responsibility to supervise the incapacitated state and to see that it fulfils its obligations. If the great power that exercises this supervision is careful to refrain from all unnecessary interference in the internal affairs of the state in question, the incapacitated state will generally recognize that the supervising state shields it from falling a prey to the rapacity of some other less considerate power. In the course of time, and as a result of the recognition of the mutual advantage of this relationship, the state of the first rank will be established *de facto* in a position of supervision or control over its weaker neighbor.<sup>33</sup> Even though this situation receive not recognition in international law, in practice it will be taken into account by the governments of all the states.

There are various degrees of this supervisory control. The United States exercises such supervision over the states of Central America, and in some measure over South America as well. This is what is sometimes spoken of as a regional control.<sup>34</sup>

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<sup>33</sup>This process recalls the *beneficium* and *commendatio* of the feudal system.

<sup>34</sup>For a short account of the Monroe Doctrine brought up to date, see John Bassett Moore: *Principle of American Diplomacy*, p. 238-269; *Bibliography*, p. 268. Professor Moore says (*ibid*, p. 258-9), "The 'Monroe Doctrine' has in reality become a convenient title by which is denoted a principle that doubtless would have been wrought out if the message of 1823 had never been written—the principle of the limitation of European power and influence in the Western Hemisphere." The void filled by this limitation on Europe is filled by the counterbalancing hegemony of the United States.

A study of the history of American Diplomacy indicates that there has been a tendency on the part of the United States to use this paramount position to protect the weaker and more backward American States from European dictation and all coercion above and beyond what was reasonable to obtain redress. Even when measures of force have been reasonably

Other states exercise a similar authority over adjacent states that are not by their own unaided efforts

employed, the satisfaction exacted has not been allowed to include the cession of territory or the establishment of a supervision over the finances or other internal affairs of the delinquent state. In place thereof, the United States exerts itself to arrange a satisfactory settlement without, nevertheless, assuming or shouldering the responsibility by guaranteeing the payment. In a less conspicuous manner, this government has exercised diplomatic pressure to prevent wars and restrict the revengeful acts of warring factions. As regards territory in proximity to its frontiers or to the Canal (perhaps also all American territory), the United States is understood to prohibit even a voluntary transfer to any European country. This perhaps affords the clearest evidence of the regional control of the United States. Professor Moore, in the work above referred to, and in his "Digest of International Law," supplies the evidence in support of these assertions. More recently, President Wilson's administration has extended the scope of this regional control so as to forbid the establishment of new governments by crimes and in violation of constitutional principles, notably in the case of Huerta (see Moore: *Principles of American Diplomacy*, p. 217-225) and still more recently in that of the Tinoco Government in Costa Rica. (See *World*, August 3, 1920.) Whatever difference of opinion may exist as to the justification and wisdom of this policy, its effect to bring the states in question more closely under the supervisory control of the United States can hardly be questioned.

The relation of the United States to the little African Republic of Liberia is described by Alpheus H. Snow in his scholarly consideration of "The Question of Aborigines in the Law and Practice of Nations" (Government Printing Office, Washington, 1919, p. 21): "The American negro settlements on the west coast of Africa maintained a precarious existence and an indefinite international status. They resembled colonies of the United States to some extent, but the United States, on account of the Monroe doctrine, denied itself sovereignty over them, and asserted their independence under its patronage. Their international independence was at last recognized and the State of Liberia came into existence. The United States has stood in the position of 'next friend,' or international patron, disclaiming sovereignty or control of any kind, but holding itself morally obligated to use its good offices on behalf of Liberia in all international complications. It has thus maintained a species of international guardianship

able effectively to maintain their full international status.

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—a benevolent surveillance without claim of sovereignty or responsibility.”

Professor Delbrück, discussing President Wilson's intervention policy in Mexico, said in the course of an interview (*New York Sun*, Nov. 9, 1913): “Other questions, however, are involved. Who gave the United States the overlordship of the Western Hemisphere? By what right, moral or otherwise, does the United States interfere in Mexico and dictate who is to be President? No right exists. There is no question but might, which is not changed by the fact that the people themselves and civilization in general probably will be served thereby.”

Prof. Hershey (*Essentials of International Law*, § 142, p. 152-3) discusses “The Primacy of the United States in America.” He considers that “it is a primacy essentially political in its nature, which has no legal basis whatsoever, but rests upon certain maxims enumerated by the fathers of the Republic, and applied by American statesmen.”

Bertrand Russell (*Why Men Fight*, p. 108) says: “The South American Republics are sovereign for all purposes except their relations with Europe, in regard to which they are subject to the United States: in dealings with Europe, the army and navy of the United States are their army and navy.”

An English writer expresses the following opinion: “The Monroe Doctrine is nothing more than the expansion of the natural sense of guardianship felt by the United States as the predominant power in that part of the world for the minor states whose institutions are more or less modelled on their own, which is aroused when a likelihood arises of interference with their liberty or institutions on the part of a foreign power.” (F. W. Payn: *Cromwell on Foreign Affairs*, p. 85.)

In his remarkable study of this relationship between states in different stages of political and social development, Alpheus H. Snow (*Question of Aborigines in the Law and Practice of Nations*, p. 196) considers that the trusteeship of the superior state “...is for conservation and elevation of status. A conservator or guardian can find in the private law no warrant for altering for the worse the social status of the incompetent person or the ward. His duty is to alter it, if possible, for the better.

“When the United States extended its sovereignty over Cuba, the Philippines, and Porto Rico, as the result of the Spanish War, the public sentiment was strongly against ‘im-

Captain Mahan, referring to the parable in the Bible (Matthew XXVI, 14-29) maintains "that the pos-

perialism' and in favor of the doctrine that 'the Constitution follows the flag.' In developing a conception of the law of nations which should take account of this public sentiment the American Government based itself upon the conception of a trusteeship implied in sovereignty. By recognizing this trusteeship under the law of nations, through acts of the government declaratory of the trust, the relationship between the United States and the countries to which its sovereignty was extended was established as being social and not imperial, and the spirit of the Constitution was made to follow the flag and to permeate the spirit of the peoples within whose territories the flag had been raised by the power of the United States in conformity with the existing law of nations."

In a campaign speech (*New York Herald*, Aug. 29, 1920) President Harding, inveighing against what he considered the abuse of this power, said: "Nor will I misuse the powers of the Executive to cover with a veil of secrecy repeated acts of unwarrantable interference in domestic affairs of the little republics of the western hemisphere, such as in the past few years have not only made enemies of those who should be our friends, but have rightfully discredited our country as their trusted neighbor."

"The following extract is from a letter of Hon. E. J. Phelps, written at the time of our intervention in Cuba: "The idea that this country, or any other, is justified in undertaking a moral or political supervision over the affairs of its neighbors, and in correcting by armed invasion the faults of their institutions or the mistakes of their administration, or administering charity to them by force, is absolutely inadmissible and infinitely mischievous." (E. J. Phelps, Letter in *New York Herald*, March 29, 1898.)

Lord Eustace Percy, one of the ablest of the younger British diplomatists, stationed several years at Washington, discusses with a frankness which gives added value to his remarks the relations of the United States to her weaker neighbors:

"In the last few years the United States has been driven into a policy of expansion in Nicaragua, in Hayti, and in Santo Domingo; but her motives have been, not financial, but strategic and humanitarian. From the strategic point of view she cannot tolerate chronic misgovernment in any of the states lying within and on the flank of the 'south coast line' to which she has now pushed forward her strategic frontier—the line through the Caribbean from Cuba to Colon and Panama. And

session of power is a talent committed in trust, for which account will be exacted, and that, under some

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even if it had been possible on grounds of expediency to ignore such misgovernment, the humanitarian attitude which has been her boast would have made inaction impossible.

“The Nicaraguan policy of the United States displays the same features as her Cuban record. She has exerted her influence, has intervened, has withdrawn—has, in short done everything but assume direct and permanent responsibilities. She aided and abetted the expulsion from Nicaragua of the dictator Zelaya; she then, in 1910, went very near intervention for the overthrow of Madriz, whom she regarded as Zelaya’s legatee, and when the expulsion of that gentleman failed to lead to a restoration of stable government, she actually intervened in 1912, and sent marines to Managua. The opposition of the Senate defeated President Taft’s first attempt to deal with Nicaragua as his predecessor had dealt with Santo Domingo and President Wilson found at the outset of his administration that he was responsible for a Nicaraguan government placed in power by American bayonets, but with no means of controlling or maintaining it. This, indeed, is still the position at the present day. The United States has recently gone so far as to conclude an agreement with the Nicaraguan Government by which she acquires a naval base in the Bay of Fonseca, an option on the construction of any inter-oceanic canal across Nicaraguan territory, and a measure of control over Nicaraguan finances. There, however, she has stopped. She has not taken over the foreign relations of Nicaragua and has done little to regularise the relations of this small republic either with the outside world or with its Central American neighbors.” (Lord Eustace Percy: *The Responsibilities of the League*, p. 90-92. Hodder and Stoughton, London, 1919.)

A few pages further on, Lord Eustace writes:

“The United States has therefore responsibilities for Cuba. Foreign nations can call on her to secure their just rights in the island. Cuba is made a sort of dependency of the United States, and the United States has shown that she is fully alive to considerations of what may be called strategic imperialism, by acquiring naval stations on the shores of Cuba at Guantanamo and Bahia Honda.

“Moreover, the Platt amendment has not remained a dead letter. In 1906, the United States made use of her powers under Clause 3 by occupying the island and she remained there for three years. During this second occupation she

circumstances, an obligation to repress evil external to its borders rests upon a nation, as surely as responsibility for the slums rests upon the rich quarters of a city." (A. H. Mahan: *Some Neglected Aspects of War*, p. 107.)

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went considerably deeper in laying the foundations of government than she had first attempted to do. The whole of Cuban law underwent a radical revision, and when the second evacuation took place in 1909, Americans had become much more keenly conscious how serious was the task of securing good government for the people they had freed. Many people conversant with Cuban conditions thought the evacuation premature, and experience has more or less borne out their apprehensions. Till 1913 the government of Cuba remained thoroughly bad. Public opinion in the United States became increasingly convinced, especially during the negro risings of 1912, that a third occupation would be necessary. An improvement has taken place since the election of President Menocal in 1913, but a serious doubt has grown up in the mind of thoughtful Americans whether their policy is really adequate. Cuba is a ward, she is not wholly and solely responsible for her own actions, she has recognized the United States as her guardian. But this guardianship is only potential. In ordinary times it is in abeyance, and takes no stronger reform [a form] than that of diplomatic lectures." (Ibid, p. 85-7.) Professor Moore has given a brief and clear account of the relations between the United States and the republics to the south of us. (J. B. Moore: *Principles of American Diplomacy*, p. 400-408; cf. also Dickinson: *The Equality of States*, 1920, p. 246-7.)

In the ancient Hindoo philosophy, we find an interesting statement of the objections incident to political control of one state by another. Benoy Kinnar Sarkar, in his article discussing the doctrine of Mandala (*American Political Science Review*, August, 1919, p. 400) quotes Shookra to the effect that "Great misery comes of dependence on others. There is no greater happiness than that from self rule," and Kautila's remark on "Foreign rule" to the effect that such a "country is not treated as one's own land, it is impoverished, its wealth carried off, or it is treated as a 'commercial article.'" Mr. Sarkar remarks that this description recalls John Stuart Mill's metaphor of the "cattle farm" applied to the "government of one people by another."



The supervisory relationship is held by some to affect the equality and the independence of the states concerned, but this effect does not flow from the regional control itself, but the regional control is merely a recognition and a result of a condition which exists *de facto*. It is of first importance for the successful development of international law and the harmonious conduct of international relations that this supervisory control should be more fully understood and recognized as a part of international law.

The following unimportant incident illustrated this need of a better recognition of the correct principle: When the French landed men in Hayti during the disturbance in 1915, the account in the *New York Sun*, June 23, stated: "As a result of the French having landed men, it became necessary for the United States to send a bigger ship and an officer of higher rank than the *Descartes* and her commander." If the supervisory control of the United States in Hayti were to be fully recognized in international law, such a matter of ceremonial procedure would give way to the more direct authority of an American commander whatever might be his rank or the size of his ship.

In practice this regional control is found to adapt itself so perfectly to the practical application of the principles of international law that this system, which was at first a mere compromise applied in special instances has now become an important part of our international system.<sup>35</sup>

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<sup>35</sup>See Stowell's *Diplomacy of the War of 1914*, p. 497-502. Palmerston in a letter to Lord John Russell, Aug. 9, 1847, frankly states the true status of Portugal and the reason why its separate existence has been preserved. He writes, "... , and it is only by maintaining Portugal in its separate existence, and in its intimate and protected state of alliance with England, that we can be sure of having the Tagus as a friendly instead of its being a hostile naval station." (Ashley's *Life of Palmerston*, vol. I, p. 20.)



Although this relationship of regional control has not yet received that formal recognition which entitles it to rank as law, it is so generally applied in practice as to approximate law, and to make almost certain the attainment of that status in the not distant future. For the present, in international practice, whenever it is a question of relations with a state within a regional control, it is important to remember:

(1) That the rule of noninterference does not apply in actual practice to the relations between the paramount state and its wards unless due allowance is made for the effect of this regional control.

(2) That any interference by a third state,—that is a state outside this regional control,—with a state included therein will probably, and not unreasonably, be regarded by the paramount state as an unjustifiable interference with its vital interests.

(3) That notwithstanding the foregoing, any state may, when its international law rights are denied, proceed against the delinquent state to obtain redress, provided always that a reasonable opportunity is afforded to the paramount state to undertake itself the burden of exacting on the part of its ward a compliance with its international obligations. Whenever the paramount state is unwilling or unable to induce its ward to fulfil its international obligations, the injured state may interpose directly on its own account.

### THE EUROPEAN CONCEPT

The development of regional control or hegemony of a great power is the natural course of development, as is shown by the position of the United States on the American Continent, and of Great Britain, France, and Japan in Asia and in parts of Africa. Before the war, Germany exercised a like influence over certain neigh-

boring states."<sup>22</sup> But in Europe the great powers have not been able to develop this particular control or supervision over smaller and more backward states because of the proximity of the great states to one another, and because of the keen rivalry between them.<sup>23</sup>

The balancing of rival interests which has blocked the action of any single state in Europe has made necessary combined or collective intervention for the regula-

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<sup>22</sup>See Stowell: *Diplomacy of the War of 1914*, p. 496-502.

<sup>23</sup>This is the explanation of the following statement from Lawrence: "... We may, therefore, say that the supremacy of the Great Powers is felt only in matters which are connected more or less intimately with European politics, though they may not belong geographically to Europe." (Lawrence: *Essays on Some Disputed Questions in Modern International Law*, p. 229.)

Had Holland been in Asia and situated near a state like Germany, it would have fallen under German control, but in Europe Great Britain blocked the road. It was natural that the Dutch, in the conduct of their foreign affairs, should defer sufficiently to Great Britain to sustain British interest in the continuance of Dutch independence, but, if Great Britain on her part should presume too far upon this deference, the government of the Netherlands corrected this excess by inclining toward Germany. By a similar policy of balance, other small states of Europe have been able to maintain their independence. They escape the dictation of a single power, and are only compelled to accept the decrees of the powers acting collectively. The position of Portugal is somewhat anomalous, and may properly be classed as within the British sphere of influence.

Professor Edwin D. Dickinson, in his remarkable study entitled, "The Equality of States in International Law," in the course of his discussion of the action of the European Concert, comments upon the status of Greece: "...but the truth is that for nearly a century the great powers have governed the affairs of Greece in a series of conferences in which that state has not participated." (E. D. Dickinson: *The Equality of States*, p. 302.)

tion and settlement of matters of common concern.<sup>38</sup> The most powerful states have found it expedient or necessary to have recourse to such collective action so frequently that it became customary to speak of them in their collective capacity as the European Concert.<sup>39</sup>

In the Balkans we find the best expression of this concerted action of the European powers to regulate in-

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<sup>38</sup>“.....whereas when the Great Powers guaranteed the neutrality of Belgium, they fixed the international status of the newly-created kingdom, and made its neutralization a principle of public law. The consent of the lesser states was not asked; but they were tacitly assumed to be bound by the acts of their more powerful neighbors. Similarly in such matters as recognition of independence, admission of another state to the rank of a Great Power, and reception of a semi-civilized state into the family of nations, the Great Powers act on behalf of others as well as themselves. They speak in the name of Europe, and bind it by their decisions.” (Lawrence: *Essays on Some Disputed Questions in Modern International Law*, p. 231-2.)

Professor Pillet, discussing the fundamental rights of states, recognizes the control of the principal powers over the conduct of international affairs. He writes: “The principal states known as the Great Powers have acquired the direction of the important interests which are of common concern. They decide upon the improvements to be made in the positive law of nations, they regulate the affairs which are of general interest, they take action to obviate great dangers which threaten them all. The Great Powers have, therefore, an evident superiority in fact which tends to become a superiority in law, by reason of the continually increasing deference with which their decisions are observed by the states concerned, even though they might, speaking from a strictly legal viewpoint, disregard decisions in regard to which they have not been consulted. (Translated from *Revue générale du droit international public*, Vol. 5, p. 71. Professor Pillet refers to Alfred Chrétien, *Principes de droit international public*, p. 171.)

Cf. also H. von Rotteck's (*Recht der Einmischung*, p. 95-6) interesting remarks about the rôle of the European Concert; Günther (*Völkerrecht*, Vol. I (1787), p. 296) alludes to this right of action.

<sup>39</sup>President Wilson, in his war message to Congress says: “A steadfast concert for peace can never be maintained except by a partnership of democratic nations.”

ternational affairs and to prevent the outbreak of war with its menace for the security of all the states. For centuries the Turkish Empire had been disintegrating. Russia and Austria were gnawing at its vitals. Their procedure was to defend the Christian populations against the oppressions of the Turks and to seek to incorporate them within their own empires, but the other European states, who were not willing to allow this increase of power to Austria and Russia, threw their influence toward the preservation of the Turkish Empire, and, when this was impossible, they insisted upon the establishment of small independent states.<sup>40</sup> For many

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<sup>40</sup>Professor Holland, in his book, *The European Concert in the Eastern Question*, has collected the important documents relative to this matter, and supplied brief historical introductions. In an introductory chapter, he says:

“The assumption of a collective authority on the part of the powers to supervise the solution of the Eastern question—in other words, to regulate the disintegration of Turkey—has been gradual. Such an authority has been exercised tentatively since 1826, systematically since 1856. It has been applied successively to Greece, to Egypt, to Syria, to the Danubian principalities and the Balkan peninsula generally, to certain other of the European provinces of Turkey, to the Asiatic boundaries of Turkey and Russia, and to the treatment of the Armenians.” (Holland: *The European Concert in the Eastern Question*, p. 2.)

Another writer, F. W. Payn, remarks: “The relation of the powers at the Berlin Conference to the Petty States which they then called into existence are those of guardian and ward. ‘If uncontrolled by Europe, the animosities and jealousies of Greeks, Bulgars, Serbs, and Macedonians, preventing them from acting in concert and leading to internecine conflicts, might quickly lead to the reimposition of the Turkish yoke upon her former provinces or more probably to an international conflict for the partition of Turkey, disturbing the peace of the world and fatal to the independence of these little States.’ ” (F. W. Payn: *Cromwell on Foreign Affairs*, p. 85.)

Rolin-Jaequemyns, in his study of the oriental question (*Revue de droit international et de législation comparée*, Vol. 8, (1876), p. 367-9) recognized the right and the obligation of

years Great Britain protected the Turkish Empire against Austria and Russia until Germany took its place and pursued a similar policy. The result has been to place Turkey *de facto* in the position of a ward of Europe, obliged to conform to the will of a European Concert when it could speak with the force based upon the agreement of the great powers, but when, after the dissolution of the Dreibund, or Kaiserbund (1888), as it was sometimes called, Russia and Austria became partisans of rival political systems or groups, the powers of Europe then found it expedient to substitute for the previous European Concert a dual control in which Austria and Russia should act for the two rival alliances or political groups of Europe. The other powers counted upon this machinery to maintain the *status quo*, for it was evident that these antagonists could not agree on anything except it were a measure necessary to prevent war or to protect the general interests.

Aside from the rights of the Concert corresponding to that of a paramount state in its sphere of influence, the European Concert has an added authority which comes from the fact that its action is collective.<sup>41</sup>

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the European powers to intervene in the Balkans to protect the inhabitants from Turkish misrule.

<sup>41</sup>When action is collective, the overwhelming force back of the decision gives it in fact a deference similar to a precept of law, and we may also regard the nations acting collectively as the nations in conclave. Now a conclave of the nations has always been recognized as the means of defining and enforcing the law of nations, just as anciently and before the development of more permanent and more highly differentiated institutions, the gathering of the people interpreted the law, and made provision for its execution. Hall recognizes (4th ed., § 95, p. 307), that "a somewhat wider range of intervention than that which is possessed by individual states may perhaps be conceded to the body of states, or to some of them acting for the whole in good faith with sufficient warrant."

## MANDATES

Everyone knows the elementary principle of administrative law that although it is for the many to advise, performance should be left to one, and the Concert of Europe has shown a tendency to conform to this rule in the substitution of the dual Balkan control for the old Concert. Following along this same line of reasoning, France's landing troops in Syria in 1860 has been often spoken of as the carrying out of a mandate from Europe.<sup>42</sup> The victory of the Allies has afforded an occasion to carry this idea still further, and to recognize the mandates of certain powers to supervise the affairs of certain designated states or territories. They act as the agents, that is mandatories, of the collectivity of powers making the assignment.<sup>43</sup> It

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<sup>42</sup>See R. Robin: *Des Occupations*, p. 281-5. We discuss this incident more fully below § 8 (a).

Because France was the tacit mandatory of Europe, Guizot was justified in declaring: "When Charles X, in 1830, declared hostilities against the Dey of Algiers, that could not be called on our part a defensive war; yet was it, nevertheless, legitimate. In addition to the insult we had to revenge, we also satisfied a great and lawful interest, not only French, but European, by delivering the Mediterranean from the pirates who had infested it for ages." (Guizot, *Memoirs*, Translated by J. W. Cole, London, 1861, Vol. 4, p. 100.)

Professor Kebedgy draws a distinction between action as a mandatory and the ordinary intervention of a single state. A power acting in the capacity of a mandatory—that is as the delegate of the powers is, he says permitted to act "only with the consent of the others and within the limits of the authorization." (Translated from Kebedgy: *Intervention*, p. 82.)

<sup>43</sup>See Article 22 of the Covenant of the League of Nations, which is in part a codification of principles long acted upon. Cf. Secretary Colby's note to Earl Curzon of November 20, 1920, relative to the British mandate over the Mesopotamian oil fields (published in the press November 26, 1920), in which he speaks of "the establishment of the mandate principle" as "a new principle": but the treaty only gives a

would, perhaps, be accurate to say as the mandatory of Europe, since these same powers exercise, for the present at least, a paramount control over European affairs.

These so-called mandates, if prolonged and associated with a particular state or region, would approximate the regional control discussed above, and to the extent of the terms of the recognition thereby accorded, the supervision of any power within the region of its control now exercised *de facto* will become *de jure* an institution of the public law of nations.<sup>44</sup>

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verbal recognition to an institution which has long existed in practice, although it has heretofore been an expedient of a somewhat exceptional nature.

A few other instances where mandatory is used in this sense are Lawrence: *Some Disputed Questions in Modern International Law*, p. 230; Hershey: *Principles of International Law*, p. 151.

<sup>44</sup>Nevertheless, mandates may be assigned for the control of regions which have hitherto had no intimate relationship with the paramount or trustee state, as was indicated by the offer to the United States of a mandate over Armenia.

President Wilson in his message to Congress, May 24, 1920, advising that the United States accept the proffered mandate over Armenia, quoted from the appeal of the San Remo conference a portion which dwells upon the advantageous position of the United States to undertake the task because of its disinterested situation "...because they believe," so the appeal read, "that the appearance on the scene of a power emancipated from the prepossessions of the Old World will inspire a wider confidence and afford a firmer guarantee for stability in the future than would the selection of any European power." (Congressional Record, May 24, 1920, p. 7533.)

The American Military Mission to Armenia, known as the Harboard Mission, in its report dated October 16, 1919, gives an account of the frightful treatment to which the Armenians have been subjected, and considers under what conditions one of the great powers might undertake as a mandatory the supervisory control of the country. This report contains a valuable statement of the nature of the task, and formulates reasons for and against the acceptance by the



The exercise by a great state of police and supervisory powers over a small state seems at first appearance to impinge upon the equality of the small state, and to interfere with that independence to which it is entitled under the law of nations. There is, however, no violation of international law since the supervising state can only use its authority to compel the supervised state to fulfil its international obligations. Any supervisory action not reasonably necessary to this end is an abuse of force, and is not rightly classed as police or supervisory action.<sup>45</sup>

The state may be worthy of respect for its culture and for its influence, yet lack the material resources or traits of character necessary to enable it unaided to discharge its international obligations. We should recognize that the state supervised may possibly be, in certain respects at least, superior to the supervising power. In any event, no good can come of denying the facts of international relations and trying to sustain a theoretical equality of states which has no foundation in practice nor in law when the true principles of international law are correctly understood and applied.<sup>46</sup>

In international law, rights are always correlative with duties, and no state can expect to retain the right

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United States of the mandate, should it be offered. In the enumeration of the motives which may influence this country in reaching a conclusion, we find a good statement of certain of the motives which are generally present and often potent to induce states to intervene in the internal affairs of other states.

<sup>45</sup>In the case of mandates under the Covenant of the League of Nations Article 22 seeks to prevent such abuse of power by the requirement that "the mandatory shall render to the Council an annual report in reference to the territory committed to its charge."

<sup>46</sup>Dr. T. J. Lawrence, discussing the Concert of Europe, touches upon this question:



of sovereign decision, called independence, when by its conduct it makes clear that it cannot fulfil the inter-

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“If, then, the principles and rules of the law of nations are really to be deduced from the practice of nations whenever that practice is consistent and uniform, it is time, I think, to give up the doctrine of equality in deference to the stern logic of established facts. For many years Europe has been working around again to the old notion of a common superior, not indeed a Pope or an Emperor, but a Committee, a body of representatives of her leading states. During the greater part of the present century England, France, Austria, Prussia and Russia, have exercised a kind of superintendence over European affairs under the name of the Great Powers, and in 1867 Italy was invited to join them. An examination of the history of a few important international transactions will show the growth of what is called the Concert of Europe, and will enable us to discern in some degree the nature and limits of its functions. It will at the same time reveal to us a difference in kind as well as in degree between the rights of sovereign states under modern International Law. (T. J. Lawrence: *Some Disputed Questions in Modern International Law*, 209-210.)

G. F. de Martens (*Précis*, § 119), over a century ago, spoke “of states of small or medium size which, however sovereign they may be in theory, are affected in their freedom to enter into agreements out of regard to powers that keep them in a very real dependence while they preserve the outward appearance of a formal independence.”

Sheldon Amos refers to this question “in order,” as he remarks, “to show that a purely legal dogma of an abstract equality cannot take the place of true political equality.” (*Remedies for War*, p. 63.)

Westlake remarks:

“The rights of equality and independence are often reckoned among the inherent rights of states. With regard to the first, semi-sovereign or dependent states are manifestly unequal to sovereign or independent ones, and even the latter are ranked for ceremonial matters in an order of precedence, while it is not pretended that they are or ought to be equal to one another in the influence which accompanies strength. Their equality consists in the fact that in the received principles and rules of international law, other than those of a ceremonial nature, no distinction is made between great states and small, so that the influence of strength is only lawful

national law obligations of an independent and sovereign state. In so far as the state under tutelage is

when exerted in modes which the right of self-defence does not authorize those on which it is exerted to resist. Thus considered, and there is really no other way of considering it, the equality of sovereign states is merely their independence under a different name." (Westlake: *International Law*, Vol. I, p. 321.)

The recently published study on "The Equality of States in International Law," by Professor Edwin D. Dickinson of the University of Michigan, has given us a thorough and scientific study of this doctrine of equality. This is a work of unusual merit and is almost certain to correct the prevailing misconceptions as to state equality. Mr. Dickinson, in his conclusion, writes:

"The principle of equality has an important legal significance in the modern law of nations. It is the expression of two important legal principles. The first of these may be called the equal protection of the law or equality before the law. States are equal before the law when they are equally protected in the enjoyment of their rights and equally compelled to fulfil their obligations. Equality before the law is not inconsistent with the grouping of states into classes and the attributing to the members of each class of a status which is the measure of capacity for rights. Neither is it inconsistent with inequalities of representation, voting power, and contribution in international organizations. The second principle is usually described as equality of rights and obligations or more often as equality of rights. The description is a heritage from theories of natural law and natural right. What is really meant is an equality of capacity for rights. Equality in this sense is the negation of status. If applied without qualification in international organizations it requires equal representation, voting power, and contribution. Equality before the law is absolutely essential to a stable society of nations. If it is denied the alternatives are universal empire or universal anarchy. Equality of capacity for rights, on the other hand, is not essential to the reign of law. Strictly speaking, it has never been anything more than an ideal in any system of law. Among states, where there is such an utter want of homogeneity in the physical bases for separate existence, there are important limitations upon its utility even as an ideal." (Dickinson: *The Equality of States in International Law*, pp. 334-5.)

able to fulfil its duties, let it lay claim to exercise the corresponding attributes of independence, and let the trustee state, supported by the public opinion of the other states, and if need be by their intervention, hasten to help and not to retard this progress toward full independence and sovereign statehood. When a state ignores its obligations, be it in even an isolated instance, it is liable to encounter the interposition of the state it has wronged, or the intervention of other states who perceive that such conduct constitutes an assault upon the principles sacred to them all, and necessary to the preservation of international society. So regarded, all justifiable intervention is a case of supervision instituted for the governance of a particular matter. In the succeeding sections, we shall examine the occasions in which such intervention is justifiable.

## CHAPTER III

### NON-INTERFERENCE

#### § 11. INTERFERENCE

We have seen that there are certain cases when a state is warranted in using force, either to secure redress for an injury, or to protect international society by enforcing respect for law and by preventing the abuse of a right. Such instances of intervention are of frequent occurrence, but we have still to examine certain other instances before we shall be in a position to decide whether the grounds upon which recourse to force is defended are to be condemned as unjustifiable interference. Interference as between states may be defined as the unwarranted reliance upon force to constrain an independent state to adopt or to refrain from a particular course of action.

Since interference may result from menace as well as from the employment of actual force, it is important to distinguish between counsel offered in a friendly spirit, and similar "advice" which carries with it a threat of execution by force.<sup>47</sup> This distinction gives us no difficulty. It is only necessary to bear in mind that whether

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<sup>47</sup>The same distinction based upon the absence of constraint hold as regards intercession, good offices, and mediation, the consideration of which must be reserved for a later volume on the procedure for the settlement of international controversies.

Westlake remarks: ".....the tender of advice to a foreign government, even about the internal affairs of its state, is not

force is actually used or not, there is interference whenever an independent state is in fact restrained from the free exercise of its sovereign rights under international law by an intimation, however covert, of an intention to employ force to influence its action.<sup>48</sup>

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intervention and violates no right, though it is generally injudicious. Statesmen must remember that though governments and states are different, and it is to states that the rights given by international law belong, yet it is governments that they have to live with and whose susceptibilities they will therefore find it needful to consult." (Westlake: International Law, Vol. I, p. 320-321.)

<sup>48</sup>Usually the intimation is not given in so crude a form as to amount to a threat of force. A word to wise governments is sufficient, and from even the slightest hint, a small state understands what its greater neighbor wishes. A refusal to acquiesce will bring into play against it the wide reaching influence of the great state, and unless the smaller state can counter by some retaliatory action sufficiently important to act as a deterrent, it must expect to feel the full weight of the great state's hostility exercised in a peaceful but unfriendly manner. The consequences may be very disastrous to the small state. The smaller state usually yields perforce to the dictation of the greater, and avoids the disagreeable consequences which would result from an insistence upon its rights. We have then a veritable instance of interference, but it is one which neither of the states concerned cares to proclaim as such.

The essential object of investigation in any instance ought to be to discover whether an undue influence has been exerted upon the government to induce it to adopt a desired course in such a manner as really to affect its freedom of action.

The mere fact that a particular course is adopted by a small state from fear that otherwise the great neighbor will make it suffer does not constitute an act of interference unless the great state has given an intimation or warning which thereby attaches to the act a greater certainty of a disagreeable consequence.

The anticipation that the greater state may use force is the ordinary condition of interstate life, but an intimation to the effect that force will be used is an attempt to control the weaker state by duress. Should an intimation be disregarded

✓ In discussing interference, the writers generally confine themselves to internal affairs, but there would seem

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under such circumstances, it is almost certain that the interfering state will make an especial effort to let the other state pay the penalty of its temerity.

Halleck perceives that a menace of force may constitute an interference. He says: "*Armed intervention*, [i. e., forcible interference] on the contrary, consists in threatened or actual force, employed, or to be employed, by one state in regulating or determining the conduct or affairs of another." (Halleck: *International Law*, ch XIV, § 12, p. 335.)

But so keen an observer as Stapleton would make the actual employment of force the criterion of interference. This is to confuse the means with the purpose, as so frequently occurs. He says:

"Of all the principles in the code of international law, the most important—the one on which the independent existence of all weaker states must depend—is this: No state has a right **FORCIBLY** to interfere in the internal concerns of another state, unless there exists a *casus belli* against it. For, if every powerful state has a right at its pleasure *forcibly* to interfere with the affairs of its weaker neighbors, it is obvious no weak state can be really independent. The constant and general violation of this law would be, in fact, to establish the law of the strongest.

"This principle as here laid down is the true principle of 'non-intervention' [non-interference]. But by leaving out the word *forcible*, and by then applying it, without limitation or explanation, much confusion respecting it has arisen.

"It is essential, therefore, that it should be correctly defined; for, taking it in the broad sense in which it is sometimes taken, as forbidding all kinds of intervention [interference] in the internal affairs of neighboring states, it is neither defensible in theory nor harmless in practice." (A. G. Stapleton: *Intervention and Non-intervention*, London, 1866, p. 6.)

Professor Kébedgy (*Intervention*, p. 9) with a similar opinion, quotes Kant's *Essay on Perpetual Peace* to the effect that: "No state should forcibly mix in the constitution and government of another state."

As regards the statement that the actual use of force is not an essential idea of interference, we cannot do better than quote Sir Robert Morier's answer to the Duke of Cambridge,

to be no sufficient reason for insisting upon this limitation.<sup>49</sup> No doubt interference in international affairs is generally a more serious offense, and will be found

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who did not see how Great Britain could intervene to stop the Franco-German war without an army: "I ventured to observe that there were certain moves on the political chess-board which necessarily led to checkmate, and that good players did not go on playing after these were executed." (Memoirs of Sir Robert Morier, II, 153.)

Russia interfered at Olmütz (1850) just as surely as if force had been employed. France, Germany and Russia interfered between Japan and China in 1896, just as surely as if the ships of war assembled in Chinese waters had belched forth their fire.

Pellegrino Rossi states this principle clearly, although his definition of interference is restricted to internal affairs, and does not include intermeddling in foreign relations. He says, "There is said to be intervention [interference] when a state mixes in the internal affairs of another state for the purpose of modifying its political system. That the intervening [interfering] state acts through menace, through invasion, or through any other means of constraint, and whether upon its own initiative, or upon the request of one of the parties that divide the state where the intervention [interference] takes place, is of slight importance." (Translated from Rossi's article on Intervention in *Archives de droit et de législation*, Vol. I, (1837), p. 357.)

Frederick de Martens says: "Intervention [interference] takes place by means of diplomatic notes or by force of arms" (Bergbohm's German Edition, Vol. I, p. 299).

De Floeckher writes: "Intervention [interference] exists from the moment that notice of the demand is given to the state upon which it is made, and it is not necessary that it be enforced for the state often yields to the pressure brought to bear upon it." (de Floeckher: Intervention, p. 4, cf. also Geffcken in Holtzendorff's Handbuch, Vol. IV, p. 131-2.)

Professor Berner also perceives that the actual use of force is not essential to constitute intervention. (Berner article on Intervention in the *Deutsches Staats-Wörterbuch* (1861), Vol. V, p. 341.)

<sup>49</sup>Some of those who limit intervention to internal affairs are Rossi: Intervention, *Archives de droit*, (1837), p. 357; H. von Rotteck: *Recht der Einmischung*, 1845, p. 17; Bernard: Intervention, 1860, p. 1; Carnazza Amari; Non-intervention,

to be less frequently extenuated by circumstances. Nevertheless, the use of force or the reliance thereon to dictate a sovereign state's conduct of foreign affairs is just as certainly an act of interference. Interference abroad, equally with interference at home, hinders a state in the exercise of the rights which belong to it by virtue of its sovereignty, independence, and equality.

It follows then that non-interference in foreign as well as internal affairs is the correct rule of state conduct. But no state has a right to make an abusive use of its independence and to insist that it may pursue its selfish course without regard to the consequences for its neighbors. International law, guided by the experience and practice of states, has qualified the general rule of non-interference to admit certain other grounds of intervention which have been recognized as justifiable and more worthy of consideration than would be an insistence upon pushing to an abusive extreme the right of unrestricted independence of action in the conduct of a state's internal and external affairs. J

In the following sections, we shall now consider the various grounds upon which states justify their encroachments upon the independence of their neighbors, and we shall be particularly interested to define any of these grounds of action before which the rule of non-interference gives way to recognize a just ground of intervention.

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in the *Revue de droit international* (1873), Vol. V, p. 353; Rougier: *Les Guerres Civiles*, 1903, p. 328.

Among the authorities who expressly include external affairs as well as internal are Vidari: *Intervento*, 1868, p. 5; Kebedgy: *Intervention*, 1890, p. 37; *The Standard Dictionary*; Cavalieri: *Intervento*, 1913, p. 8.



## § 12. VIOLATION OF SOVEREIGNTY

Without attempting to exercise constraint, a state will sometimes attempt to perform within the jurisdiction of another state acts of sovereignty, that is acts of authority which may under international law be performed only by the local sovereign.<sup>50</sup> Within another's jurisdiction, no state may perform any acts of authority unless permission has either been given by the local sovereign, or derived from some undisputed principle of international law. The performance of any act of authority constitutes a violation of sovereignty, and is an offense which no really independent self-respecting state will tolerate.<sup>51</sup>

There is a similar violation of sovereignty if a state attempts through penal enactments to compel individuals, while outside its own jurisdiction, to obey its commands in disrespect of the provisions of the local law wherever they may be. These two classes of instances are sometimes spoken of as acts of interference, but they are not the same as the other acts of interference discussed in the preceding section. For the offended sovereign is not constrained, but insulted, and immediately demands redress for the injury. If it should happen that the injured state meekly accepts the insult, then the violation of sovereignty merges into

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<sup>50</sup>The action we are discussing does not include what we have called self-help (see above § 1), for self-help is really coöperation.

<sup>51</sup>As examples of violations of sovereignty which are currently spoken of as interference, we may take the case of Crampton, the British Minister in the United States, who, at the time of the Crimean War, was given his passports for violating American neutrality and sovereignty in inducing recruits to proceed to Canada for enlistment in the war against Russia. (See Crampton's Case, Stowell and Munro: *International Cases*, Vol. II, pp. 278-285.)

interference, for we may consider that it is virtually constraint that causes the injured state to forego its demand for redress.

There are other acts somewhat analogous, although they cannot be classed as violations of sovereignty, as when, for example, foreign representatives try to exert an indirect influence upon the government to which they are accredited, in order to induce it to conform to some desired policy. This may be done through the medium of the press, or through individuals of influence in government circles. There is also said to be interference when the agents of a foreign government pass over the heads of those with whom they are expected to negotiate in an attempt to bring pressure to bear upon the government to induce it to conform to their wishes.

This indirect influence is always resented by the government against which it is directed, even when it does not consider that the manœuvre has been successful, and by general agreement, the rules of international law and diplomatic intercourse have come to set bounds to the political activity of foreign agents. To overstep them is to be guilty of a disrespect to the local sovereign and in a lesser degree to commit an infraction of its sovereign rights.<sup>52</sup> A good name for these lesser infractions would be "contempt of sovereignty."<sup>53</sup>

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<sup>52</sup>Another British Minister, Lord Sackville West, in 1888 was peremptorily dismissed by Grover Cleveland because he was shown to have advised a correspondent, supposedly of British origin, to vote for the reëlection of Cleveland. (Stowell and Munro: *International Cases*, Vol. 1, p. 10.) Such a serious transgression as this was a violation of international law, and not merely a disregard of international comity or courtesy.

<sup>53</sup>An illustration of such violation or contempt of the sovereign authority of the receiving state was the action of Ambassador Bernstorff, or his agents, in publishing a warning

Even though there be no use of force in those instances of interference which constitute a disregard or disrespect of sovereignty, there is an insult which unless it be redressed, will lessen the respect, and hence the independence and equality of the state in question. A self-respecting state will not willingly submit to such treatment, and constraint only can explain the submission of a state which is willing to purchase safety at the expense of its honor.

Another less flagrant incident of such disrespect was recently reported in the press: Dr. Julio Bianchi, Minister of Guatemala, called upon Senator Moses, a member of the Foreign Relations Committee in reference to a Senate resolution "asking the State Department to explain this [U. S.] government's attitude towards the treatment accorded former President Estrada Cabrera of Guatemala by the new government in the Central American republic." (*New York Times*, Dec. 12, 1920, p. 14.) Shortly thereafter, in a communication to the Department of State, Minister Bianchi offered an explanation of his conduct, and added "that he regretted the incident, and promised that it would not be repeated." (*New York Times*, Dec. 24, 1920.)

A similar incident to the above occurred about this same time. The first Secretary of the British Embassy, during the illness of the Ambassador, dispatched directly to the Chairman of the Senate Committee investigating cable communication "a denial of the testimony given by a witness before the committee that the British Government censored cable messages to the United States from Great Britain." (*New York*

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in the newspapers, advising passengers not to embark upon the *Lusitania*. Of course such a warning could properly emanate from no government but that of the United States. It does not benefit the cause of peace or national honor to tolerate such conduct on the part of a foreign diplomat.

*Times*, Dec. 24, 1920; Cf. *Washington Star*, Dec. 23, 1920; *Washington Post*, Dec. 26, 1920.) To judge by the statements in the press, the State Department considered it necessary to notice these departures from the usual procedure of diplomatic intercourse.

Governments are particularly sensitive to any remarks made in regard to political matters under discussion in the legislature. It is evident that a foreign representative must be allowed to communicate politely and discreetly to the minister of foreign affairs the consequences which he believes will result from the adoption of the proposed measure but he must not go one step further and state what his government will do, or give publicity to his views, for he then attempts either to impose the views of his own government, or he usurps advisory functions in the place of the constituted authorities. Professor Moore states this well recognized rule: "It is not permissible for one sovereign to address another sovereign on political questions pending in the latter's domains, unless invited to do so."<sup>54</sup> (Digest, VI: 5.)

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<sup>54</sup>Col. Repington relates the incident of the former Kaiser's letter to Lord Tweedmouth, dated February 2, 1908, in which William II tried to allay the apprehension caused Great Britain by Germany's naval plans. Col. Repington was probably justified in considering this as an attempt to influence in German interest a British Minister at a most critical moment before the estimates for the Navy were coming on in Parliament. The Kaiser's action was severely criticized in the *Times*, but the English press in general seems to have been inclined to minimize the matter. (Col. Charles A. Repington: *Vestigia*, London, 1919, p. 284-292.)

The same writer tells how, because he criticized certain well-known defects of the German Army, the Kaiser, "ordered his new Ambassador, Baron Marschall von Bieberstein, to see Colonel Seely, then Secretary of War, and to demand my dismissal from the position of editor" of *The Army Review*, an organ of the British General Staff. "The Ambassador," writes Col. Repington, "received a very crisp answer for his

After Viscount Grey returned from his mission to the United States, he published a letter in the *London Times* in which he discussed the ratification of the League of Nations Covenant. He explained the constitutional functions of the Senate in regard to treaties and the reason for the opposition to certain provisions of the League Covenant, and he lent his support in favor of certain modifications to meet these objections. Now President Wilson had been insisting that there must be no modification of the articles, and Lord Grey's letter could not help annoying him, but there was absolutely no possible ground upon which to base a complaint. Lord Grey had done no more than explain informally for the British public what it was right that they should be told. If the real purport was to inform the Senate that the British Government was less insistent upon an unamended treaty than was President Wilson, it was an able piece of diplomacy, a worthy example of the art. (See press reports: Feb. 6, 1920.)

The *Sun* and New York *Herald* (Feb. 6, 1920) gives the following interviews with Senator Hitchcock, Chairman of the Senate Foreign Relations Committee, and generally regarded as President Wilson's spokesman:

"Senator Hitchcock insisted the Grey letter has been greatly overrated as to its importance and effect on the Senate situation. He issued a call for a conference of Democrats friendly to ratification to be held Saturday afternoon.

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“Admitting that he had received a number of communications from the White House, Senator Hitchcock said none had borne on the general proposition of the treaty.

“ ‘Has there been any change in the President’s attitude?’ he was asked.

“ ‘I do not think I can tell you that,’ was the reply. ‘But I do not think the Grey letter will have much effect. It may affect the men who have thought the Allies would reject the treaty if we attached the Lodge reservations to it, but I never have believed they would object if we left the reservation subject to acceptance by acquiescence. There would have been danger if we had left in the preamble the requirement that the reservations be accepted in writing.

“ ‘The Grey letter seems to have been written for several purposes. One was to allay the feeling in Great Britain against the United States. Another was to help procure ratification here by making clear that Britain had no objection to the Lodge reservations. Nearly everybody had understood that.

“ ‘Before he left Washington I talked with Lord Grey and learned that his government did not seek six votes for the Empire and had little concern about them; but the British Government felt it would be embarrassed in its relations with the colonies and dominions if they were disfranchised. To declare that America would not be bound by any decision in which it took part would be equivalent to disfranchisement. I do not think Britain is concerned how many votes we have, but she does object to depriving her dominions of their votes.

“ ‘Publication of the Grey letter in the press was an extraordinary proceeding for a government official. He could not do it here and he did it for a purpose. It seems to have been intended to placate British feelings

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against the United States and I do not regard it as a discourteous act. Lord Grey observed every propriety while here.' "

The New York *Times* (February 6, 1920), states:

"The one definite conclusion obtained from the White House announcement of to-day was that officials close to the President feel that Lord Grey, who still holds the rank of Special Ambassador to the United States, although he has returned to London, adopted a rather exceptional course in publicly expressing views which he must have known were in entire discord with the public utterances of the President in regard to the treaty situation.

"The fact that Lord Grey, in his letter to the London *Times*, states that he spoke as an individual and not in the rôle of representative of his Government, has not been looked upon as materially changing the situation developed, especially in view of the fact that, as published in the New York *Times* on Monday, he showed to more than one Senator, during his visit here, a cablegram from Premier Lloyd George in which the latter stated that the Lodge reservations were satisfactory, and that England wanted the United States to enter the League of Nations.

"The publication of this information by the New York *Times* has attracted almost as much interest as the Grey communication to the London *Times* itself. There has been no effort to deny that such a cablegram existed and made its appearance in Washington at some of the conferences which Lord Grey held with Republican and Democratic Senators. In fact, several Senators have admitted either seeing or hearing of the cablegram and Senator Borah has had his version of the text of the now famous message included in the Congressional Record as part of an address attacking the League."

## § 13. ASSISTANCE

The efficacy of international society is, as we have seen, dependent upon the coöperation by the states whenever such coöperation is required to preserve the existence of a member state or to enable its government to fulfil its obligations under international law. It is not to be expected that any state will expend in this coöperation so great a portion of its resources as to endanger its own security or to prove an intolerable burden. The amount of the sacrifice which the coöperating state will make for this purpose will depend partly upon the benefits which it expects ultimately to derive from its effort, and partly upon its regard for the common good. The hope of enjoying a similar benefit when the circumstances are reversed also enters into the calculation. Reasoning *a priori* from this indisputable premise, international law would appear to justify states in coming to the assistance of a sister state to help it to suppress rebellion and preserve its orderly life. History affords us many precedents and certain of the older authorities also support this view.<sup>55</sup>

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<sup>55</sup>“It was customary,” writes Rougier, “in the 16th and 17th centuries to stipulate in peace treaties that in the event that one of the contracting states should find itself involved in a rebellion, the other states would refuse to the insurgents every manner of succor; cease all commerce with them; and deliver them into the hands of their sovereign.” (A. Rougier: *Guerres civiles*, p. 374; refers to De Olivart: *Del reconocimiento de belligerancia y sus effectos inmediatos*, Madrid, 1895, p. 4; for interesting details relative to the Anglo-Spanish treaty of November 15, 1630, and the Franco-Spanish treaty, Pyrenees, 1659.)

As similar in principle, we may refer to the treaty of March 15, 1834, between Austria, Prussia and Russia for the extradition of political offenders, including those who had risen against their governments. (British State Papers, vol. 53, 1862-3, p. 872-3; cf. *ibid*, p. 871-2.)

Even as late as 1860, Theodore D. Woolsey, whose opinions are still highly esteemed, wrote: "...there is nothing in the law of nations which forbids one nation to render assistance to the established government in such case of revolt, if its assistance is invoked. This aid is no interference, and is given to keep up the present order of things, which international law takes under its protection."<sup>56</sup> (Woolsey: *Introduction to International Law*, 1st ed., 1860, § 41, p. 89; also 6th ed., § 42, p. 43.)

But this theory has a serious imperfection. It does not work in practice. By the test of actual experience, it has been tried and found wanting.<sup>57</sup> The assistance which a state accords its struggling neighbor has been found to deepen the hostile feelings of the factions, to discredit the sovereign, and to render it suspect of dependence upon the will of the helping state.

By other states the transaction is regarded with utmost jealousy, since it often presages a close alliance, and the state rendering assistance likewise becomes the target of all the disappointed parties in the assisted state. Its action engenders undying hatred. For all these reasons, assistance for the purpose of suppress-

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<sup>56</sup>Geffcken quotes Guizot as saying that the French intervention in Spain, "...in spite of its success, brought no good, either to Spain or to France. It delivered Spain over to the incapable and incurable despotism of Ferdinand VII, without putting an end to revolutions, and substituted the ferocities of the absolutists in place of the anarchists. Instead of the maintenance of French influence beyond the Pyrenees being assured, it was injured and destroyed." (Translated from Holtzendorff: *Handbuch des Voelkerrechts*, vol. IV, 143.)

Russia's interference to assist Austria to crush the Hungarian uprising had much to do with arousing public opinion against the intermeddler, who was punished at Sebastopol. In this case, it might be said that Russia interfered to serve a national interest in assisting to suppress an uprising in close proximity to her Polish provinces.

<sup>57</sup>See Bluntschli: *Voelkerrecht*, § 474.

ing insurrection can no longer be justified as in accord with the approved practice of civilized states, and since it has been condemned in practice, assistance may properly be classified as unjustifiable. It is therefore an instance of interference.<sup>58</sup>

Funck-Brentano and Sorel point out that a government exceeds its authority when it calls upon foreign help:

“When a state intervenes [interferes] to sustain the internal government of another state, in accordance with the wishes of the latter, the intervention [interference] results from an alliance; but this alliance is of a peculiar nature, for the government which asks or accepts the intervention [interference] of a foreign state itself attacks the sovereignty of the state which it directs. Such a government demonstrates its incapacity to make its authority respected by the subjects of the state, and it declares by implication that it has allowed the sovereignty of the state to perish. States are not states, are not sovereign, and are not

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<sup>58</sup>Bluntschli contradicts what he has said (§ 474) and falls into error by declaring that “intervention is authorized when the state itself either requests a friendly power to intervene or accepts an offer to do so.” (Translated from Lardy’s French edition, § 475.)

But Hall remarks: “As interventions, in so far as they purport to be made in compliance with an invitation, are independent of the reasons or pretexts which have been already discussed, it must be assumed that they are based either on simple friendship or upon a sentiment of justice. If intervention on the ground of mere friendship were allowed, it would be idle to speak seriously of the rights of independence.” Further along, Hall declares that if the intervention “be directed against rebels, the fact that it has been necessary to call in foreign help is enough to show that the issue of the conflict would, without it, be uncertain, and consequently that there is a doubt as to which side would ultimately establish itself as the legal representative of the state.” (International Law, 4 ed., § 94, p. 307.)

independent unless they maintain order within, and secure respect for their territory. States only exist as the representatives of nations and the defenders of their interests. A state that appeals to foreign support against its own subjects fails in its duty, since instead of defending the nation against foreigners, it invites foreigners to violate its independence, and it exceeds its rights, since it no longer acts as a representative of the nation." (Translated from Funck-Brentano et Sorel: *Droit des Gens*, p. 219-220.)

But an invitation would evidently not be essential if the action to suppress revolution could be justified as taken to protect all of the states against a great and imminent danger.<sup>88</sup> This was the basis of the interference policy of the Holy Alliance to suppress revolutions. Metternich states this program of the Holy Alliance in a circular dispatch of May 12, 1821.

"Useful or necessary changes in the governments of states must emanate only from the free will and the thoughtful and enlightened initiative of those whom God has made responsible for power.

"They (the powers) will consider void, and contrary to the principles of the *public law* of Europe, all pretended reforms brought about by revolution, or by force."<sup>89</sup> (Circular, May 12, 1821, Martens: *Nouv. Recueil*, vol. V, p. 644; Lingelbach: *Intervention in Europe*, p. 12.)

The British Government, championing non-interference, had opposed these doctrines of assistance to legit-

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<sup>88</sup>See discussion above, under § 9.

<sup>89</sup>See Sheldon Amos: *Remedies for War*, p. 265-7; W. A. Phillips: *The Confederation of Europe*, p. 218-233; and it was to oppose this broad assertion of a right to interfere that Castlereagh issued his famous circular of January 19, 1821.

imate government.<sup>61</sup> But even the British Government mildly interfered itself by delaying the recognition of the revolutionary government in Naples, and by criticizing the manner in which it had come into power.<sup>62</sup>

This was an exception and on the whole the British Government threw its influence against the legitimacy doctrine which would excommunicate revolutionary government.

On January 19, 1821, Viscount Castlereagh addressed the following circular to the British ministers at Foreign Courts:

“I should not have felt it necessary to have made any communication to you, in the present state of the discussions begun at Troppau and transferred to Laybach, had it not been for a Circular Communication, which has been addressed by the Courts of Austria, Prussia and Russia, to their several Missions, and which, His Majesty’s Government conceive, if not adverted to, might (however unintentionally) convey, upon the subject therein alluded to, very erroneous impressions of the past, as well as of the present, sentiments of the British Government.

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<sup>61</sup>“Lord Liverpool’s government in 1815 objected to the introduction of the words ‘souverain légitime’ [legitimate sovereign] into a draft of a treaty with the restored government in France.” (Bernard: Non-Intervention, p. 15.)

<sup>62</sup>In answer to Lord Grey’s speech in the House of Lords, February 19, 1821, attacking the government for interfering to assist the King of Naples, Lord Liverpool denied that his government had interfered, or that ground for interference had been given, (referring evidently to forcible interference), but declared that the circumstances made “indispensably necessary that the government should publish its disapproval of those proceedings. In the first place that revolution was effected by a military mutiny; and, in the next, the Spanish Constitution was adopted under the most extraordinary circumstances.” (Hansard’s Debates, 2nd Series, vol. 4, p. 764.)

“It has become, therefore, necessary to inform you, that the King has felt himself obliged to decline becoming a Party to the measures in question.

“These measures embrace 2 distinct objects :

“1st. The establishment of certain general principles for the regulation of the future political conduct of the Allies, in the cases therein described ;

“2ndly. The proposed mode of dealing, under these principles, with the existing affairs of Naples.

“The system of measures proposed under the former head, if to be reciprocally acted upon, would be in direct repugnance to the fundamental Laws of this Country. —But, even if this decisive objection did not exist, the British Government would, nevertheless, regard the principles on which these measures rest, to be such as could not be safely admitted as a system of international law. They are of opinion that their adoption would inevitably sanction, and, in the hands of less beneficent Monarchs, might hereafter lead to a much more frequent and extensive interference in the internal transactions of States, than they are persuaded is intended by the August Parties from whom they proceed, or can be reconcilable either with the general interest, or with the efficient authority and dignity of Independent Sovereigns. They do not regard the alliance as entitled, under existing Treaties to assume, in their character as Allies, any such general powers, nor do they conceive that such extraordinary powers could be assumed, in virtue of any fresh diplomatic transaction amongst the Allied Courts, without their either attributing to themselves a supremacy incompatible with the rights of other States, or, if to be acquired through the special accession of such States, without introducing a federative system in Europe, not only unwieldy and ineffectual to its object, but leading to many most serious inconveniences.

“With respect to the particular Case of Naples, the British Government, at the very earliest moment, did not hesitate to express their strong disapprobation of the mode and circumstances under which that Revolution was understood to have been effected; but they, at the same time, expressly declared to the several Allied Courts, that they should not consider themselves as either called upon, or justified, to advise an interference on the part of this Country: they fully admitted, however, that other European States, and especially Austria and the Italian Powers, might feel themselves differently circumstanced; and they professed, that it was not their purpose to prejudge the question as it might affect them, or to interfere with the course which such States might think fit to adopt, with a view to their own security; provided only, that they were ready to give every reasonable assurance, that their views were not directed to purposes of aggrandizement, subversive of the Territorial system of Europe, as established by the late Treaties.

“Upon these principles, the conduct of His Majesty’s Government, with regard to the Neapolitan Question, has been, from the first moment, uniformly regulated, and Copies of the successive Instructions sent to the British Authorities at Naples, for their guidance, have been, from time to time, transmitted for the information of the Allied Governments.

“With regard to the expectation, which is expressed in the Circular above alluded to, of the assent of the Courts of London and Paris to the more general measures proposed for their adoption, founded, as it is alleged, upon existing Treaties,—in justification of its own consistency and good faith, the British Government, in withholding such assent, must protest against any such interpretation being put upon the Treaties in question, as is therein assumed.



“They have never understood these Treaties to impose any such obligations; and they have, on various occasions, both in Parliament and in their intercourse with the Allied Governments, distinctly maintained the negative of such a proposition: that they have acted with all possible explicitness upon this subject, would at once appear from reference to the deliberations at Paris in 1815, previous to the conclusion of the Treaty of Alliance;—at Aix-la-Chapelle in 1818;—and, subsequently, in certain discussions which took place in the course of the last year.

“After having removed the misconception to which the passage of the Circular in question, if passed over in silence, might give countenance; and having stated in general terms, without however entering into the argument, the dissent of His Majesty’s Government from the general principle upon which the Circular in question is founded; it should be clearly understood, that no government can be more prepared than the British Government is, to uphold the right of any State or States to interfere, where their own immediate security, or essential interests, are seriously endangered by the internal transactions of another State.—But, as they regard the assumption of such right as only to be justified by the strongest necessity, and to be limited and regulated thereby, they cannot admit that this right can receive a general and indiscriminate application to all revolutionary movements, without reference to their immediate bearing upon some particular State or States, or be made prospectively the basis of an Alliance.—They regard its exercise as an exception to general principles, of the greatest value and importance, and as one that only properly grows out of the circumstances of the special case; but they, at the same time, consider, that exceptions of this description never can, without the utmost danger, be so far reduced to

rule as to be incorporated into the ordinary diplomacy of States, or into the Institutes of the Law of Nations.

“As it appears that certain of the Ministers of the 3 Courts have already communicated this Circular Dispatch to the Courts to which they are accredited, I leave it to your discretion to make a corresponding communication, on the part of your Government; regulating your language in conformity to the principles laid down in the present Dispatch. You will take care, however, in making such communication, to do justice, in the name of your Government, to the purity of intention which has no doubt actuated these August Courts, in the adoption of the course of measures which they are pursuing. The difference of sentiment which prevails between them and the Court of London on this matter, you may declare, can make no alteration whatever in the cordiality and harmony of the Alliance on any other subject, or abate their common zeal in giving the most complete effect to all their existing Engagements.” (British State Papers, 1820-1, Vol. 8, p. 1160-2.)

For a time Metternich was able to organize the continental monarchs for the purpose of interfering to insure themselves against the dangers of revolution, but even Russia sympathized with the Greek revolt and would not help to suppress it.<sup>63</sup> The Revolution of July (1830) in France gave the doctrine of interference to assist the “legitimate” government a fatal blow, although it was a long time before the reactionary powers entirely abandoned the policy of suppressing revolution.<sup>64</sup>

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<sup>63</sup>See W. A. Phillips: *The Confederation of Europe*, p. 234f.

<sup>64</sup>Metternich protested, in September, 1830, against “the presumption of the French Government for its own convenience, to set up a new law of nations, which was nothing more than a complete overturning of all the rules which had until

In 1843, Nassau Senior remarks upon the views of Austria, Prussia, and Russia as to the illegality of insurrection against the "supreme, never ceasing, indivisible authority of a king," and continues, "They further assert that, by international law, all third parties are justified in interfering to enable a sovereign to retain or recover his authority. Whether they should or should not actually interfere, they have considered it a matter of discretion to be governed by the circumstances of each case; but we are not aware that any one of them has ever abandoned, or doubted, or even limited that right." (Edinburgh Review, April, 1843, vol. 156, p. 365.) But on the same page, Senior states that England "denies that third parties can lawfully interfere to force a people to obey their sovereign." (Ibid, p. 365-6.)

In some instances, the British Government went further than a mere denial, as is shown by the following instructions of March 2, 1863, which Lord Russell, then Minister for Foreign Affairs, dispatched to the British Representative at Berlin:

"The Convention which has been concluded between Russia and Prussia, relating to the affairs of Poland, has caused considerable uneasiness in this country.

"The Powers of Europe were disposed to be neutral in the contest between the Russian Government and the Polish insurgents.

"Prussia has departed from this course.

"My inquiries, as well as a dispatch from Lord Napier, have led me to believe that the Convention contains:

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then guided the diplomacy of European states." (Lingelbach: *Intervention in Europe, in Annals of the American Academy*, Vol. 16, (1900), p. 14, citing Geffcken in Holtzendorff's *Handbuch des Völkerrechts*, Vol. IV, p. 143.) But even before this, action by France, England had opposed the doctrine of legitimacy and restoration.

“1. An agreement that Russian troops, upon crossing the frontier of Prussia, shall not be disarmed, as would be required according to international usage, but shall be allowed to retain their arms, and to remain, and to act as an armed body in Prussian territory.

“2. A permission for Russian troops to pursue and capture Polish insurgents on Prussian territory.

“Count Bernstorff defended this Convention, and declared that it was not an engagement invoking intervention [interference] in the contest between Russia and the Poles.

“But it is clear that if Russian troops are to be at liberty to follow and attack the Polish insurgents in Prussian territory, the Prussian Government makes itself a party to the war now raging in Poland.

“If Great Britain were to allow a Federal ship-of-war to attack a Confederate ship in British waters, Great Britain would become a party to the war between the Federal Government of the United States and the Confederate.

“It is obvious that by this Convention Prussia engages to become a party in the war against the Poles without any apparent necessity for so doing. For Her Majesty's Government have not heard that any disaffection prevails in the Polish provinces of Prussia.

“It is but too probable that this Convention will irritate the Polish subjects of Prussia, tend to excite disaffection where it has not hitherto existed, and thus extend the insurrection.

“Upon viewing this Convention in all its aspects, therefore, Her Majesty's Government are forced to arrive at the conclusion that it is an act of intervention [interference] which is not justified by necessity; which will tend to alienate the affections of the Polish subjects of the King of Prussia; and which, indirectly,

gives support and countenance to the arbitrary conscription of Warsaw.

“You will read this dispatch to M. Bismarck, and you will ask for a copy of the Convention between Prussia and Russia.

“It is possible that the Government of Prussia and Russia, aware of the objections to which this Convention is liable, and seeing the ill consequences it may produce, may be disposed to cancel it, or to put an end to its operation.

“In that case you will inform me what steps have been taken with that view.” (British Foreign State Papers, 1862-3, vol. 53, p. 807-8.)<sup>65</sup>

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<sup>65</sup>Three days later, Lord Russell seems to have considered the convention less offensive (see British State Papers, 1862-3, vol. 53, p. 814.)

In reference to this convention, it is interesting to read the remarks of Representative Waldeck in the Prussian Chamber, February 18, 1863, in which he severely criticized Bismarck's interference to assist Russia in suppressing the Polish insurrection. (British Foreign State Papers, 1862-3, vol. 53, p. 793-4.)

In his despatch of February 21, 1863, the British Minister at Berlin especially drew Lord Russell's attention to Representative Waldeck's speech, “first, because it has excited special attention, and has highly exasperated the semi-official organs of the Government; and secondly, because it fairly represents the feelings of a great portion of the Liberal party in regard to the proposed intervention.

“To mark still more its sense of what the exigencies of the present moment demand, the Party of Progress has drawn up a resolution to the effect that ‘the House do declare that the interests of Prussia require that the Government should abstain from rendering any assistance, or showing any favor either to the Russian Government or to the insurgents, and that consequently neither of the parties engaged be admitted upon Prussian territory without being previously disarmed.’

“This resolution has been submitted to a committee of 21 members, and will be brought before the House as soon as the committee have drawn up their report upon it.

We still occasionally find instances of assistance of a less pronounced or drastic nature than is the forcible invasion of a neighboring territory, as for example, when a state makes no protest when a neighbor blockades territory in the control of insurgents for the purpose of suppressing a revolt without according recognition of belligerency.<sup>66</sup> Sometimes such complaisance

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"The language of the Liberal press is unanimous in condemning the policy of the Government, but it is so much an echo of what has been said in the Chamber that a reproduction of it would only be a repetition of what is given in the enclosed report.

"A circular addressed by the President of Police at Breslau to the Silesian press is not uninteresting as showing the possible proportions which the intervention may take. It warns the newspapers against giving any indications of the movements of the troops, saying that all the advantages of sudden concentration would be thereby lost, 'whether such would be required for the defence of the frontier or for direct action in the neighboring State ("zu einem directen auftreten im Auslande")'.

"It is further worthy of notice, in connection with this subject, that Thorn and other important towns situated in the Polish districts have sent up deputations, principally composed of Germans, to protest against the rumors put about to the effect that the districts from which they come were disturbed, or that the inhabitants apprehended danger." (British Foreign State Papers, 1862-3, vol. 53, p. 789-790.)

"Lord Lyons, in a letter of March 26, 1861, relates how "Mr. Seward asked whether England would not be content to get cotton through the northern ports, to which it could be sent by land." (Lord Newton: Lord Lyons, I, 1913, 31.)

Notwithstanding Lord Lyons's objection, five days later Mr. Seward told him: "I differ with my predecessor as to *de facto* authorities. If one of your ships comes out of a southern port without the papers required by the laws of the U. S., and is seized by one of our cruisers and carried into New York and confiscated, we shall not make any compensation." (Ibid, 33.)

Notwithstanding Seward's insistence, Great Britain recognized the belligerency of the Confederate States.

Holland (Studies in International Law, p. 138-140) gives the following instances of acquiescence in blockade without

is an act of assistance no less effective than an armed intervention would be. Another form of assistance which may be effective in suppressing insurrection is an embargo upon the shipment of arms, such as the government of the United States has sometimes proclaimed on its Mexican frontier. Such an order is sure to handicap the operations of the insurgents, and it is likely to lead to and justify reprisals." Still another

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such recognition: Russia's blockade of Circassia in 1826, and Turkey's blockade of Crete, 1866-68, and also of 1897. The same authority says (*ibid*, p. 145): "Third Powers may more fairly be called upon to make this sacrifice when the blockade has a high political object, as in a case of intervention, or is a measure of self-preservation, such as the suppression of a rebellion."

"...In order to prevent the giving of aid to the enemies of the government at the City of Mexico, the Congress of the United States adopted a joint resolution empowering the President to stop the exportation of arms and munitions of war. President Taft approved this resolution on March 14, 1912, and on the same day put it into effect. The export of military supplies for the Mexican government continued to be lawful." (J. B. Moore: *The Principles of American Diplomacy*, 1918, p. 216.)

Yet a few months previous [January 25, 1911], Hon. Wilbur J. Carr, writing for Secretary Knox, had set forth the principles in regard to the export of contraband. "You should in this connection have also clearly in mind that it is not illegal, being against neither the international laws of neutrality nor the rules of our neutrality statutes, to trade in arms and ammunition during a war or during a revolution; that trade in such materials is merely trade in contraband of war; and that the persons engaging therein are subject to no other penalty than the confiscation of the materials in which they are trading. Therefore, so long as our customs laws are complied with in the matter of the commercial shipment of arms and ammunition into Mexico it is not clear in what way we may legally interfere with traffic in such materials on this side of the border. If the Mexican Government desires to exclude such materials from her territories, it is clearly her duty and not ours to accomplish such exclusion." (*Foreign Relations*, 1911, p. 399. Cf. *Ibid*, 415-6; 433.)

interference by way of assistance is to grant a right of transit for the purpose of facilitating the suppression of an insurrection.<sup>68</sup> After the United States had recognized Carranza's Government, permission was given to the Mexican troops to traverse our territory. It was not surprising that the Villa faction had recourse to reprisals. On March 9, 1916, Villa, at the head of fifteen hundred Mexicans, raided the town of Columbus, New Mexico, killing several persons and committing various acts of destruction.<sup>69</sup>

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To reconcile this conflict of opinion and disparity of practice, it is necessary to remember what has been said above under § 10, relative to the supervision of less developed states. The United States cannot always apply the rules of international law in Mexico as if she were dealing with a completely independent state instead of with one subject to a certain supervision.

<sup>68</sup>In the *New York Sun* (April 17, 1920), it was reported from Washington that the United States Government had refused to allow Carranza to transport troops across United States territory to attack rebels in Sonora. The dispatch stated: "The precedent established when troops were rushed across American territory for the purpose of defeating Villa at Agua Prieta will not be followed."

Relative to the above incident, I have prepared the following account from my notes of documents read to me, and of verbal statements made at the Department of State, in May 1920, but I have not yet received a copy of the documents which I requested:

October 19, 1915, the Mexican Government asked permission for transit from Laredo and Eagle Pass to Agua Prieta, Sonora, via Douglas "for the purpose of affording fuller protection to foreigners and natives in the northern part of the State of Sonora, now menaced by certain forces of Francisco Villa, and to make it an easier task for my government to defend that section of the republic." October 22, the United States acknowledged the Mexican note and gave permission for a group of four or five thousand men, unarmed, arms and ammunition to be sent as baggage, and a small detachment of American troops to act as an escort.

<sup>69</sup>For a brief account of these events, see J. B. Moore: *Principles of American Diplomacy*, p. 227f.



After it has been shown that interference for the purpose of assisting a government in the suppression of revolt is contrary to international law, it is not necessary for us to discuss interference either for the purpose of the "restoration"<sup>10</sup> of a deposed sovereign, or the "reintegration" to their former sovereign of provinces which have established their independence.

Interference for restoration and reintegration evidently violates the *de facto* principle of sovereignty still more seriously than does interference merely for the suppression of revolt. Consequently their illegality needs no demonstration and we may now pass on to consider the nature of state action which is the oppo-

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<sup>10</sup>Every generation in European history has had its deposed monarchs to show how ineffectual was the sentimental doctrine of legitimacy and the related constitutional principle of the divine right of kings to prevent the recognition of the *de facto* revolutionary governments.

Nevertheless we find many instances of the persisting strength of this idea of legitimacy, as when the Dutch and French gave asylum to Charles II and his adherents. Perhaps on the same grounds the Dutch were not very active in bringing to punishment the murderers of Cromwell's ambassador, and shamelessly allowed the regicide judges to be extradited after the restoration of Charles II. (See Sir George C. Lewis: *Extradition*, p. 48 note.) Cromwell's Ambassador to Sweden was instructed to protest (1682) against the reception of the representative of the Stuart Pretender. (John Thurloe: *State Papers*, vol. I, p. 228.)

According to a Berne despatch of July 27, 1920 (*New York Times*, July 29, 1920), the socialist press of Switzerland condemns the government for the favorable treatment accorded royal personages in refuge. The dispatch states that a government report discloses that "Switzerland has two laws for strangers desiring to enter and dwell within her gates—one for royal and princely personages and their suites, and another for ordinary individuals."

For the purpose of historical investigation and the critical analysis of the instances of interference, this division of assistance into (1) Suppression, (2) Restoration, (3) Reintegration, should prove convenient.

sition of assistance,—that is, the support of revolutionists against their government.

#### § 14. SUPPORT OF REVOLUTION

Interference in support of insurrection against the recognized government can hardly hope to find justification from the principles of international law.<sup>71</sup> On

<sup>71</sup>“No state,” declares Theodore D. Woolsey, “is authorized to render assistance to provinces or colonies which are in revolt against the established government. For if the existence and sovereignty of a state is once acknowledged, nothing can be done to impair them; and if the right of interference,—in favor of liberty for instance,—be once admitted, the door is open for taking part in every quarrel.” (Introduction to International Law, 1st ed., 1860 § 41, p. 89.)

It is not necessary to refer to the host of authorities that have reiterated the illegality of interference in internal questions. Sir Henry Maine (quoting Mr. Hall) remarks: “Thus with regard to the first power or right which is alleged to reside, by the nature of the case, in a sovereign state, the power of organizing itself in such a manner as it may choose, it follows that such a state may place itself under any form of government that it wishes, and may frame its social institutions upon any model. To foreign states, the political or social doctrines which may be exemplified in it, or which may spread from it, are legally immaterial.”

“This is correct law, and in our day I do not doubt that to most minds it would seem plain that, the condition of Sovereignty being taken for granted, these rights so stated follow. But, as a matter of fact, confining ourselves to this branch of state powers, none have been more violently denied or disputed; and if they were preserved it is far less owing to their logical connection with the definition of state Sovereignty, than from the fact that, from the very first, the position that they exist has been plainly stated by the international lawyers. And the fact that these rights have been preserved is a signal tribute to the importance of International Law. It happens that the long peace which extended from 1815 to 1854 was, both at its beginning and at its end, all but broken up by the denial of these simple rights of which I have been speaking.” (Sir Henry S. Maine: International Law, 2nd ed., p. 61.)

the contrary, international law undoubtedly lays upon every state an obligation to forbear from interference

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Even when France came to the help of the American Revolutionists, "...the French Manifesto states that the King of France neither was, nor pretended to be, a judge of the disputes between the King of England and his colonies; and that he took up arms to avenge his injuries, and to put an end to the tyrannical empire which England has usurped, and pretends to maintain, upon the ocean." (Annual Register, vol. 22, p. 390, quoted by Senior: *Edinburgh Review*, April, 1843, vol. 156, p. 337.)

John Stuart Mill, in a letter to Pasquale Villari, June 30, 1857, wrote: "The English Government will never aid a people to overthrow its government, however detestable it may appear. You have seen how the English Government did not oppose French intervention in Rome, Russian intervention in Hungary, and even during the war against Russia, it was not willing to stir up Poland. Is that not conclusive?" (Freely translated, Mill's Letters, vol. I, p. 195.)

Mill's opinion is borne out by Seward's plaint in his instructions to Minister Motley dated July 14, 1863:

"If your speculations concerning the Polish revolution are correct, as I believe they are, then it will be seen that a location within the immediate sphere of European politics, like that of Russia, has some advantages as well as some disadvantages. The European states suffer long and forbear much with a nation that falls under the affliction of civil war, if it be only near home. They are very intolerant of a nation, on this continent, that suffers its domestic wrangles to break the peace of the world. The Poles are not yet recognized by either France or Great Britain as a belligerent. They talk of intervention in behalf of Poland, but they do not act." (Diplomatic Correspondence, 1863, Part II, p. 926.)

In his speech on the recognition of the independence of the revolted Spanish Colonies, Sir James Mackintosh, before the House of Commons, June 15, 1824, said: "With respect, indeed to the State Papers laid before us, I see nothing in them to blame or to regret, unless it be that excess of tenderness and forbearance towards the feelings and pretensions of European Spain which the Dispatches themselves acknowledge." (Miscellaneous Works of Sir James Mackintosh, vol. III, p. 439.)

In the case of Cuba, where strife was almost chronic, the United States pushed forbearance to an extreme limit.

during a reasonable period while the lawfully established government is attempting to reassert its authority. That this forbearance entails a considerable burden and loss is no adequate ground for interfering until a period reasonable under all the circumstances has been allowed for the reëstablishment of the authority of the recognized government.<sup>72</sup> And, even after the lapse of this interval, the presumed continuance of friendly sentiments should prevent any state from recognizing the revolting government unless the protection of important interests require it. A decent respect for the ties and relationships which bind together all the nations should make every state delay rather than hasten any proffer of aid.<sup>73</sup> This obligation of forbearance does not relate only to armed invasion, but requires the state authority to refrain from all unfriendly acts or encouragement to the insurrectionists. This obligation of forbearance also requires states to police their frontiers and to prevent the organization and departure of hostile expeditions. Political refuge must not be abused and allowed to screen actual prepa-

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<sup>72</sup>The misery which the blockade of the Southern ports of the Confederacy caused the cotton spinners of Manchester was not considered by the British Government as a sufficient ground for intervention.

<sup>73</sup>During the Sonderbund conflict in Switzerland (1846), which arose in part over the question of the expulsion of the Jesuits, France and the reactionary powers espoused the cause of the revolting cantons and threatened to impose upon Switzerland the arbitration of the Pope. This support of the revolt was so patently an unjustifiable interference in the internal affairs of Switzerland that Lord Palmerston was able to thwart it by diplomacy alone until Switzerland had overthrown the Sonderbund. This is a striking example of the respect paid to international law in a case where the States interfering in violation of law were much more powerful than its defenders. See Ashley's *Life of Palmerston*, vol. I, pp. 5-16. Cf. also the somewhat prejudiced account in Sir Robert Morier's *Memoirs*, vol. I, pp. 38-60.

rations for attack (see §1, § 15) and legations and warships abroad must not be made use of to facilitate the operations of conspirators (see § 8(f)).

The obligation of reasonable forbearance is put to the test in the matter of recognition. The recognition of a *de facto* government without unreasonable delay after it has firmly established its authority is a fundamental principle of international law, and until such time as we shall have a more complete organization of the states of the world, it will be difficult to conduct international relations upon any other basis.<sup>74</sup> Nevertheless, the feeling of mutual trustfulness and security requires that every state should be able to rely upon its neighbors not to impeach its sovereignty, nor to withdraw in any manner the recognition which has once been accorded except when necessary for the purpose of protecting the important interests of the State that recognizes the new government. When these conditions are fulfilled, then recognition should only be given after the insurrectionists have firmly established their *de facto* independence and have maintained themselves beyond the period in which it is reasonable to expect the other states to support the inconvenience of the conflict.

The same requirements apply also to what is often a first step of recognition—that is, recognition of belligerency. Recognition, when justified by the pressing need of the state to deal with *de facto* authorities is not interference. It is merely the exercise of an undoubted right. But any state that goes beyond the limits of what is required to secure the adequate protection of its immediate interests is guilty of a violation of the sovereignty of a sister state. Such an interference in the internal affairs of another state must be branded as

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<sup>74</sup>See Westlake: International Law, vol. I, p. 57-8.

contrary to the law of nations."<sup>16</sup> "Premature recognition" writes Professor J. B. Moore, "constitutes an act of intervention [interference], committed in favor of insurgents or of a conqueror. The recognition of the United States of America by France was in reality an act of intervention [interference] in support of revolution (cf. Moore's Principles of American Diplomacy, p. 13), as is shown by Article II of the treaty. Great Britain recognized the Kingdom of Italy before Francis II was entirely dispossessed." (Moore's Digest, Vol. I, p. 73.) Premature recognition is an unwarranted impeachment of sovereignty and is always an assault upon the rights of the parent state.

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<sup>16</sup>As long as the sovereign state is conducting military operations to regain its supremacy over the territory recognized as belonging to it under the law of nations, there is, as we have said above, a presumption against the interference of any state, even on the grounds of protecting its interests, but when the sovereign state seems exhausted, and is unable or unwilling to prolong its efforts to reestablish its authority, the presumption in its favor is lost, and those states whose interests are affected by this unfortunate condition of affairs are justified in recognizing the revolutionary *de facto* government. Funck-Brentano and Sorel discuss the question of premature recognition: "A nation which revolts against the state of which it is a part, and wishes to establish an independent state, engages in a civil war, and places itself outside of the public law of the state. A foreign state which intervenes [interferes] in support of this nation commits an act of war against the state to which it belongs, and steps outside the law of nations in time of peace. If interventions [interferences] of this kind, such as that of France in support of the United States in the reign of Louis XVI, appear legitimate, it is because instead of considering them in relation to international law, they are regarded only from a political viewpoint. Such an act, in accord with a wise and generous policy, is seen to have produced beneficial results. But this policy is none the less contrary to the principle of international law in time of peace, and if good resulted, it was only after a long and bloody war." (Translated from Funck-Brentano and Sorel: *Précis du droit des gens*, p. 221.)

But when after a protracted struggle, neither side is able to vanquish the other, or to preserve the tranquility of the territory over which it claims jurisdiction, there arises a just ground for impeachment of sovereignty. In such a condition of anarchy it is permissible for the powers to intervene and adopt such measures as seem best calculated to reëstablish order and to secure respect for international law throughout the land.

A protracted civil conflict usually degenerates into a condition of internecine warfare, and as such justifies humanitarian intervention (see § 8(c)); or the executive of the directing powers, acting in concert or separately as mandatories (§ 10), may consider that the freedom of sovereignty and the ensuing anarchy make it necessary to impeach the sovereignty of the state over the territory in question.<sup>76</sup>

A prolonged struggle is almost certain seriously to injure the commerce of all other states, and to impose

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<sup>76</sup>Upon the ground of anarchy, intervention has been justified by many writers. Professor Strauch, after expressing the opinion that no state is justified in intervening in the case of a revolution in another state, declares that international law has no concern with the form of government each state may adopt, but he considers that the government, whatever its form, must be able to preserve order and fulfil its obligations. "When conditions of anarchy prevail," Professor Strauch declares, "other states have an undoubted right to intervene without waiting for an invitation." (Freely translated from Strauch's article on Intervention, in Bluntschli's *Staatswörterbuch*, vol. II, 1871, p. 278.)

Although the discussion of intervention in civil wars by Funck-Brentano and Sorel (*Précis du droit des gens*, p. 222) is not a juridical piece of reasoning, it is interesting and suggestive. These authors consider that a civil war puts an end to all authority, and that "in this condition of anarchy, foreign states recognize no other law than that of necessity." If, according to these authors, they find one of the parties capable of organizing a government, they recognize it, or they may act as their interests and obligations require.

upon the nearer ones great burdens of police in the fulfilment of their obligations; in addition, vigilance and military preparation are often necessary in order to be ready to protect national interests. After a reasonable period of forbearance to allow the sovereign an opportunity to reestablish its authority, there arises, as we have indicated above, a right of intervention to prevent further injury to national interests. These grounds for intervention—anarchy, humanity, and intolerable injury to the interests of other states—combine in many instances to constitute the very strongest justification for recourse to such measures as are necessary to put an end to the strife. Certain authorities, perhaps not entirely free from national bias, maintain that interference to help a subject race to secure its freedom is not interference at all. How weak is the force of logic against these enthusiastic proponents of national emancipation!" They ignore the fact that international law is a society of recognized states and has no place for tribes, races, or nations which aspire to be accepted into the good fellowship until such time as by force of arms or by diplomacy an actual independence has been achieved.

No state can remain permanently strong which continues needlessly to oppress a subject people. The authority exercised over them must be tempered with humanity, or control will sometime surely be lost. But unless the sovereign is guilty of gross inhumanity, participation in the struggle by another state is as we have

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"See Mamiani: *Rights of Nations*; or, the *New Law of European States applied to the Affairs of Italy*, p. 40-144, where the right of intervention in a civil war is denied, but is permitted to help a subject people, as in the case of the Dutch against the Spaniards; the Swiss against Burgundy, etc. This alleged ground of intervention has been considered under § 8 (b).



said, an act purely political and as such it must be judged. The evaluation of such interference requires the balancing of the benefits against the dangers and inconveniences, and the verdict which public opinion expresses needs to be checked up by consequent events.

An invitation from the insurgents can certainly have no more legal effect to justify interference in their support than when it comes from the recognized government, and since unrecognized insurrectionists have no legal standing, any appeal they may make must be considered solely from a political or moral viewpoint. Such appeals are often helpful to the interfering state as a defense against the imputation that it has harbored designs of conquest, and when the invitation comes from both the parties in conflict, mediation is properly undertaken; but in this latter event, if the proffered suggestion is enforced, mediation disappears, and we have an instance either of assistance or support of revolution, as the case may be.<sup>78</sup>

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<sup>78</sup>See Bluntschli: *Völkerrecht*, § 477; Halleck: *International Law* (1861), p. 339, ch. XIV, § 20. Halleck refers to Phillimore, vol. I, § CCCXCV, but the latter's discussion is confused.

After MacIntosh has stated (*History of the Revolution of 1688*, p. 301-2), with charm of style and accuracy of reasoning, the grounds which justify a people in rising against a tyrant, he adds: "Whenever war is justifiable, it is lawful to call in auxiliaries." But it does not necessarily follow that the appeal will justify another state in intervening; even though revolution be justifiable by the test of certain principles, it remains a matter to be determined by the people of each state, and does not concern international law, except when its course is marked on either side by tyranny and oppression so great as to justify intervention on grounds of humanity.

The acts of James II were sufficient to justify revolution, but it seems hardly possible to regard them as grounds for humanitarian intervention by foreign states, and unless we can find another justification, we must consider the invasion

It has frequently happened that states with hostile design have incited the disaffected elements in a neighbor's territory to rise in revolt. This has been condemned as a violation of international law, but is it a violation of international obligation when a just ground for war exists and this milder measure with hostile intent may achieve the result without an invasion of territory by foreign troops? Or, when an invasion is necessary, is it not laudable to secure within the territory of the transgressor the coöperation of a portion of the

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of William of Orange as an interference, contrary to the law of nations.

Vattel writes: "But if a prince by violating the fundamental laws, gives his subjects a lawful cause for resisting him, if, by his insupportable tyranny he brings on a natural revolt against him, any foreign power may rightfully give assistance to an oppressed people who ask for its aid." (Vattel, bk. II, § 56, Carnegie Translation, p. 131.)

When the conditions are such as afford grounds for humanitarian intervention, an appeal for foreign aid may be helpful to justify the intervening state by securing public sympathy and by showing the real situation.

This is the real significance of the statement by Vattel and certain other authorities that intervention in a civil war is justifiable when one of the parties appeals for support. See H. von Rotteck: *Einmischungsrecht*, p. 11 (No. 5); Martens: *Précis*, § 74; Heffter: *Völkerrecht*, § 46. In those instances when the appeal for intervention is not justified upon the ground of humanity, Hall is perfectly correct in declaring: "When intervention so undertaken is directed against the existing government, independence is violated by an attempt to prevent the regular organ of the state from managing the state affairs in its own way." If we except the instances in which humanitarian intervention is justified, we must agree with his concluding statement: "If, again, intervention is based upon an opinion as to the merits of the question at issue, the intervening state takes upon itself to pass judgment in a matter which, having nothing to do with the relations of states, must be regarded as being for legal purposes beyond the range of vision." (*International Law*, 4 ed., § 94, p. 306-7.)

population to help to enforce respect for the law that has been violated?

Formerly when the majority defended the divine right of kings and blamed any revolt against their authority as a crime they might expect other sovereigns to refrain from complicity in a revolt, but the right of a people to revolt against tyranny is now a recognized principle of international law.<sup>79</sup>

To Professor Sheldon Amos, we owe the following concise—and so far as I know, the best—statement of the principles governing state action in support of revolutionists:

“It may be considered that, so far as direct and forcible intervention in the internal affairs of a Foreign State is concerned, the positive, as well as the negative, side of the doctrine is now pretty clearly established; that the mere strength, extent, or organization of an insurrectionary movement furnish no justification for interference either on one side or the other; the duration of an anarchial condition, coupled with the apparent improbability of order ever being restored, may

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<sup>79</sup>Incitement to revolt as a means of overcoming the resistance of a transgressor cannot here be given the attention which its importance merits, and must be reserved for a volume now in preparation relative to the means of enforcing international law.

It may well be that the salutary principle of limiting acts of hostility to the period of a declared war should prevent all law-abiding states from committing certain overt acts such as the shipment of arms to conspirators, and the furnishing of other supplies.

“It is in violation of the Law of Nations,” writes Vattel, “to call on subjects to revolt when they are actually obeying their sovereign, although complaining of his rule.” (Vattel, Bk. II, § 56, Carnegie translation, p. 131.)

France furnished the American Revolutionary emissaries with money and supplies before she openly committed the hostile act of recognizing the independence of the Revolutionists while the conflict was still in doubt.

justify interference on the ground of the interest which all states are presumed to have in the stability and integrity of each state; and gross acts of inhumanity persisted in on either side may, on grounds of humanity, properly precipitate intervention." (Sheldon Amos: *Political and Legal Remedies for War*, p. 157-8.)

#### § 15. PREVENTION

Every state has the right, when necessary for its defense, to anticipate the attack which another state premeditates and prepares. The authorities almost without exception recognize this right of prevention, or preventive war.

Lord Bacon, in his "Essay on Empire," writes: "Neither is the opinion of some of the schoolmen to be received, that a war cannot justly be made but upon a precedent injury or provocation; for there is no question but a just fear of an imminent danger, though there be no blow given, is a lawful cause of war." (Phillimore: 1854, vol. I, p. 433.)

Grotius considers that "the first cause of a just war is an injury not yet done which menaces body or goods." (Grotius, Bk. II, ch. I, sec. II, § 3, Whewells's translation, Vol. I, 203.) But to Sir Edward Creasy we are indebted for the most perfect statement of the principle: "A state's right to security means not only the right to defend itself against actual direct attack, but the right to preserve itself from injury by anticipating attack in cases where it is manifest that attack is intended, and that such attack cannot be prevented by any pacific measures, which do not involve undue self-abasement and loss of real national dignity. In such cases (as in those of quarrels between individuals) the real aggressor is not he who first employs

force, but he who renders the employment of force necessary."<sup>80</sup> (Creasy: *First Platform of International Law*, 1876, p. 150.)

But preventive war commenced without sufficient cause under a misapprehension as to the existence of the hostile design will itself constitute, in fact if not in intent, attack upon the innocent state. It will also be an unjustifiable interruption of the peace of nations.

We may appropriately follow Grotius's example and quote Cicero's remark: "That most injuries proceed from fear. He meditates hurting another fearing that if he do not so, he will suffer some evil." (Grotius, *Book II, ch. 1. V*, Whewells's translation, Vol. I, p. 208-210.)

If unreasonable apprehensions are made the basis for an unnecessary war, the peace of all the states will be destroyed. To obviate this inconvenience, many attempts have been made to formulate the conditions when recourse to prevention is justifiable.

The text writers supply us with many definitions of the danger which would justify preventive action, but they do no more than to paraphrase what has been said above in regard to the meaning of danger. They do not attempt to set forth either the causes of the

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<sup>80</sup>Other references are: Vattel, Bk. II, § 50; Bk. III, § 26. Professor T. E. Holland writes: "The right of a state to exist in safety calls for no remark. Its violation or threatened violation gives rise to the remedial right of self-preservation." (Holland: *The Elements of Jurisprudence*, 4 ed., 1888, p. 328.)

Probably the writers who appear to controvert the right of intervention for prevention were not objecting to the anticipation of an attack actually in preparation, but only wished to deny the alleged right of attacking an innocent state on the ground that it was necessary for self-preservation;—for example, H. von Rotteck: *Recht der Einmischung*, 1845, p. 24-5. (See discussion of "Necessity" in the following section 16.)

peril or circumstances in which it may reasonably be presumed to exist.

Vattel declares that "a nation must have received an injury, or be clearly threatened with one before it is authorized to take up arms as having a just ground for war." (Vattel, *Law of Nations*, Bk. II, § 42, Carnegie translation, p. 248.)

Lord Castlereagh, in his note on the affairs of Spain, considers that the intervening state must be threatened with "that direct and immediate danger, which has always been regarded, at least in our own country, as constituting the only case which justifies foreign intervention." (De Martens, *Rec. Supp.* X. I. 176, quoted in Manning: *Law of Nations*, p. 135.)

It adds nothing to the precision of such definitions that nations should be cautioned against undertaking preventive action in doubtful cases, as when Vattel declares that a state "may even anticipate the other's design, being careful, however, not to act upon vague and doubtful suspicions, lest it should run the risk of becoming itself the aggressor." (Vattel: Bk. II, § 50, Carnegie translation, p. 130.)

Chancellor Kent informs us that "the danger must be great, distinct, and imminent, and not rest on vague and uncertain suspicion."<sup>81</sup>

Since it is the evidence of a preparation for attack which justifies the remedial action of prevention, the first step is to find a definition of attack.

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<sup>81</sup>But this same eminent authority discloses the little juridical value which he attaches to this definition when he tells us that "every nation has an undoubted right to provide for its own safety, and to take due precaution against distant as well as impending danger," and continues: "The right of self-preservation is paramount to all other considerations. A rational fear of an imminent danger is said to be a justifiable cause of war." (Kent's *Commentaries*, 12 ed., vol. I, p. 23. Kent refers to Huber, *De jure civitatis*, lib. 3, c. 7, sec. 4.)

Westlake gives us a definition when he asserts the right of a state to defend itself by preventive means "against attack by another state, threat of attack, or preparations or other conduct from which an intention to attack may reasonably be apprehended. In so doing it will be acting in a manner intrinsically defensive even though externally aggressive. In attack we include all violation of the legal rights of itself or its subjects, whether by the offending state or by its subjects without due repression by it, or ample compensation when the nature of the case admits compensation. And by due repression we intend such as will effectually prevent all but trifling injuries (*de minimis non curat lex*), even though the want of such repression may arise from the powerlessness of the government in question."<sup>82</sup> (Westlake: International Law, vol. I, p. 312-3.)

From the point of view of international law, rather than from that of any particular state, we might say that recourse to preventive action is only permissible when overt acts have been committed, reasonably indicative of an intention to attack, and when there is peril in delay.

When it cannot be said that there is peril to the independence of the state concerned in putting off re-

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<sup>82</sup>Hall expresses the same idea less concisely: "If the safety of a state is gravely and immediately threatened either by occurrences in another state, or aggression prepared there, which the government of the latter is unable, or professes itself to be unable, to prevent, or when there is an imminent certainty that such occurrences or aggression will take place if measures are not taken to forestall them, the circumstances may fairly be considered to be such as to place the right of self-preservation [prevention] above the duty of respecting a freedom of action which must have become nominal, on the supposition that the state from which the danger comes is willing, if it can, to perform its international duties." (Hall: International Law, 4 ed., § 11, p. 57.)

course to preventive action, the matter is not one of sufficient importance to interrupt the peace of nations.<sup>22</sup>

When overt acts have been committed, and when delay would endanger the existence of the state, international law recognizes that the menaced state is fully justified in having recourse to preventive war.

It is not possible to define in advance the nature of the circumstances which will in every case constitute a peril in delay, any more than it is possible to draw up an exhaustive list of acts which may be considered as indicative of an intention to attack. In every instance there is a question of fact to be decided by an exami-

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<sup>22</sup>Lawrence writes: "Governments constantly submit to small inconveniences rather than resort to hostilities; and an evil that is not sufficiently grave to warrant a recourse to the terrible arbitrament of battle is not sufficiently grave to warrant intervention. (T. J. Lawrence: Principles, 4 ed., 1910, § 65, p. 128.)

Creasy says: "We may add that, inasmuch as in most cases 'probability is a man's guide of life' (Bishop Butler), probabilities must be studied with care proportioned to the importance of the subject." (Creasy: First Platform of International Law, § 289, p. 283.) Creasy supports this statement by summarizing the words of Vattel which, as written by the latter were: "A nation's whole existence is at stake when it has a neighbor that is at once powerful and ambitious. Since it is the lot of men to be guided in most cases by probabilities, these probabilities deserve their attention in proportion to the importance of the subject-matter; and, if I may borrow a geometrical expression, one is justified in forestalling a danger in direct ratio to the degree of probability attending it, and to the seriousness of the evil with which one is threatened. If the evil in question be endurable, if the loss be of small account, prompt action need not be taken; there is no great danger in delaying measures of self-protection until we are certain that there is actual danger of the evil. But suppose the safety of the state is endangered; our foresight can not extend too far. Are we to delay averting our destruction until it has become inevitable?" (Vattel, Bk. III, § 44, Carnegie translation, p. 249.)



nation of all the circumstances, which are usually involved and complicated. Nevertheless, it is possible to analyze and classify the instances which have occurred in state practice in order to formulate a few rules to serve as a guide in reaching a correct conclusion. We shall first consider whether certain specified overt acts may reasonably be considered as indicative of an intention to attack.

A sudden and excessive increase of armament has been considered by certain writers to be sufficient evidence of hostile designs. Sir Robert Phillimore referring to G. F. de Martens, says that: "armaments suddenly increased to an extraordinary amount are calculated to alarm other nations, whose liberty they appear, more or less, according to the circumstances of the case, to menace." (Phillimore, 1st ed., vol. I, § 212, p. 226.)

But it is not always possible to decide whether the military preparations are for defense or offense. Sir Henry Maine writes: "A state may take what measures it pleases for its own defense; and a state may adopt whatever commercial system it thinks most likely to promote its prosperity. That a state has these powers is not now denied, and would not, I think, be disputed; but nevertheless if the existence of these rights had not now for two centuries been affirmed by International Law, I think they would have turned out to be full of pretexts for war. Even at this moment the patience of states is hardly tried by the way in which their neighbors act upon the principle. Take France and Germany. Rarely in the history of the world have there been such achievements of military engineering as are exemplified in the fortresses which line the long border of the two countries. Every one of those fortresses is just as available for attack as for defense; and knowing what men are, it is really won-

derful that no complaint has at present been made of the mere fact of their construction. Take again two dependencies of European countries, which are really great countries standing on a footing of their own—British India and Asiatic Russia. These are not countries in which fortresses are, or are likely to be, constructed in any large number. The conditions of climate and other difficulties render them defenses of no great value; but either power is engaged at vast outlay in creating a system of railways within its own countries; and we can see even now that any fresh railway constructed within the border of the one country gives rise at least for criticism and private complaint on the part of the other. I do not think we can doubt that if International Law had not been perfectly clear and precise on the subject of these rights, alleged to flow from the sovereignty of states, they would conduce to every variety of complaint followed by every variety of war. What really enables states to exercise their sovereignty in this way is nothing but the legal rule itself.” (Sir Henry S. Maine: *International Law*, p. 64-5.)

Creasy, epitomizing and paraphrasing the words of Vattel, approves of his opinion in making arrogance of conduct on the part of a powerful state a justifiable ground for preventive action: “If the preponderant state commits acts of injury against its neighbors or any of them, or if by the arrogance of its pretensions, the tone of its public dispatches and manifestoes, or by any other manner of conduct, beyond the mere increase of its strength, it clearly threatens to attack or oppress its neighbors, then other states are justified in combining together, and in making war on it, so as to prevent it from committing disturbance of the general security of the commonwealth of civilized nations, or of the security and independence of any of them.”

(Creasy, *First Platform*, p. 285; based upon Vattel, Bk. ch. III, p. 349.) From the context it is evident that Vattel intended to offer advice as to the prudent course to follow, rather than lay down the basis for a legal presumption.

When, however, a great state gives evidence of an intention to enter upon a course of conquest with the aim of acquiring universal dominion, it goes without saying that the imminence of the peril justifies other states in declaring war to prevent the accomplishment of the design.

#### CONCENTRATION AND MOBILIZATION

The tremendous armaments of all the great powers in the past make it difficult to characterize any such military preparations as indicative of hostile designs. They are generally justified on the ground of their necessity for the protection of widely dispersed possessions, or for the maintenance of the relative influence of the state in world affairs.

But when a state makes military preparations which are evidently a part of offensive operations to be undertaken against a neighboring state that is not itself pursuing a similar course, there is good ground for suspecting the purpose of the preparations. Prior to the war, Germany constructed railway lines to facilitate the concentration of troops on the Belgian frontier. This act alone might have been no more than a reasonable preparation to prevent disaster in case France should try to surprise Germany by an attack through Belgium, but when the German preparations were seen to include no corresponding measures of defense at other points along its frontier where it might be expected that France would be most likely to attack, they

took on the aspect of a hostile concentration for an unjustifiable attack upon France through Belgium."<sup>4</sup>

France might reasonably have made this armament a ground for preventive action against Germany had she found it expedient to do so.

Russia, just previous to 1914, secured French loans and employed them to lay a network of lines for mobilization along the German frontier, and to increase the size of her army. It would have been hardly reasonable to consider this a threatening concentration in preparation for a surprise attack because it was known that Russia would still require a period many times greater than Germany to effect her mobilization. The laying of railways and the increase of her army were as necessary for Russia's defense as for an attack.

But when one of two rival powers mobilizes or concentrates its forces in such a manner that when the

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<sup>4</sup>Col. Repington, in his "Vestigia," 1919, p. 304-7, refers to his articles in the *London Times* of January, 1911, in which he discussed the transference of the German base of concentration from the Metz and Strassburg line in the direction of the Belgian frontier. In view of the powerful German defenses on the French line, and the German tactics of envelopment, Colonel Repington said that it was apparently clear that "the axis of the future attack on France had been shifted to the north, and that a great, if not the main attack would be based upon the line Cologne-Coblentz, and that the neutrality of Belgium was threatened by this new departure of German strategy."

He considered that his reading of German intentions was supported by the German theories of enveloping attack, and by the practice of German generals at manoeuvres. Colonel Repington also states: "I also showed that General von Falkenhausen in a book which he had recently published, had calmly assumed as a matter of course that the territory of both Belgium and Holland would be violated by the contending armies, and that this general had placed his 1,250,000 men on a front of 250 miles, which was again much in excess of the length of the French frontier." (Lt. Col. Charles à Court Repington: *Vestigia*, 1919, p. 306.)

operation is accomplished it will have overcome certain strategical advantages which its rival possessed before the initiation of these operations, it is certain that the other will immediately have recourse to preventive war unless it can rely upon the fairness of the mobilizing power to reach some equitable adjustment of their difference. It may, perhaps, observe a similar forbearance when it is assured of the support of the other states.

The situation existing between Germany and Russia prior to the outbreak of the war was always one of strategic tension due to this inequality of rate of mobilization. Since Germany could mobilize in four days, while Russia was thought to require three or more weeks, it is evident that the moment Russia commenced mobilization, Germany would lose a portion of her strategical advantage every day that she delayed an attack.<sup>85</sup>

If there was any probability of war, it would not have been reasonable to expect Germany to do no more than to mobilize and patiently to wait while Russia used the succeeding days to put herself in battle array.<sup>86</sup>

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<sup>85</sup>See Stowell's *The Diplomacy of the War of 1914*, p. 184f., where this matter is fully discussed.

Many of the writers on the War of 1914 have failed to understand the consequences of what we might call unequal mobilization.

<sup>86</sup>This statement is not intended, by any means to defend the justice of Germany's declaration of war against Russia. As I have shown in my study of the events preceding the outbreak of the war, Germany gave Russia good and sufficient cause to believe that she was making preparations for war, and that she intended to force the issue. Consequently, Russia was fully justified in mobilizing, and Germany was entirely to blame for so acting as to give Russia just cause for recourse to preventive measures.

From recent disclosures of Russian documents, we learn how the Tsar was influenced by his love of peace and his confidence in the German Emperor to give the insensate order

If space would permit, we should like to examine the instances in which this same question of the dislocation of the strategical equilibrium has been involved.<sup>87</sup>

When increased armaments or strained international relations compel a neighboring state to undertake by way of precaution burdensome counter-measures, there is a tendency to regard the conduct of the state that has

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that mobilization be countermanded after it had once begun. Any intelligent and patriotic Russian officer must have felt amply justified in disobeying such a command issued by a sovereign of the poor Tsar's intelligence.

<sup>87</sup>A good illustration is furnished by the Russo-Japanese War of 1903-4. Japan did her best to avert a conflict, but Russia was uncompromising, and began to dispatch her forces to the Far East. Under the circumstances, Japan was justified in commencing by way of preventive war the attack which was thrust upon her. She was not, however, entirely blameless in doing so without a clearer statement of her intention. For a fuller consideration of this particular point, see Stowell and Munro: *International Cases*, vol. II, p. 26-34.

A similar situation arose when President Roosevelt dispatched the American fleet on its tour round the world. There was, of course, no hostile intention in this act, but the result would be to place our ships in the Pacific. Japan decided at once that she would not make an issue of the California difficulty, and relations improved.

As I write, the question of the union of the American fleet in the Pacific is alluded to in the press. When this shall have been accomplished, it is evident that Japan's relative position in the Pacific will be less than it was before. If relations were seriously strained between the two countries, this act, although it is legitimately related to the necessities of American defense, might precipitate a conflict.

When President Kruger sent his ultimatum to Great Britain, he was probably of the opinion that if he delayed, Great Britain would increase her forces in South Africa, and that the Transvaal Republic would be obliged to fight at a greater disadvantage, or accept such terms of settlement as the British Government might be willing to offer.

caused the inconvenience as internationally reprehensible, and a just ground for preventive action."

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"With reference to the news of the disaster of Isandlwana in the Zulu War, which had recently reached London, Lord Blachford, in a letter dated February 26, 1879, wrote:

"My expression about being at war 'with everybody everywhere' was a rough and unjust one, as is sometimes the case when one thing leads you to give vent to a pent-up impatience about another.

"What was in my mind was this: In Natal, in Afghanistan, in Turkey we are always assuming—at least there are a quantity of people who assume that, because this or that state or potentate is an inconvenience to us, making us keep more troops or ships than we like, or unsettling trade, or threatening the balance of power, *that* is at bottom a sufficient reason for trying to disable them, and the only question is one of waiting for a pretext. This I take it was the old theory of foreign policy, which I, for one, flattered myself was exploded or nearly so, and it is one which, if carried out to its full extent, *would* keep us engaged in disabling everybody, the U. S. because they will evidently one day threaten our naval supremacy, Prussia, Russia, France, with their great armies and ambitious objects; Italy and Greece with their prospects with regard to the Mediterranean trade, and so on.

"And the revival of this kind of Chauvinism, jingoism, or whatever you choose to call it, which is and always has been the great enemy to the peace of the world, keeps me, I confess, in that state of disgust which one feels at a thing which you find to your surprise is not too stupid to be formidable, like what I suppose Cobdenites feel towards the resuscitation of protection.

"But of course I must admit that the question is one of degree, and that there is a point at which you *must* take measures to clip the wings of a neighbor who is at once powerful and ill-intentioned." (Letters of Lord Blachford, edited by G. E. Marindin, 1896, p. 393.)

Sir George Cornwall Lewis, answering a letter from Lord Palmerston, takes up the same idea which Sir Robert Peel had expressed in the House of Commons, (see Morley's Life of Cobden, p. 358), and argued that it was not a wise matter of policy to attempt to insure against all these dangers by counter-armament. Although the discussion in these letters was relative to a question of national policy, its broad international bearing justifies me in reproducing them here.

## INNOCENT GROWTH

Since international law does not authorize intervention to prevent a neighboring power from conscious

“November 22, 1860.

“My dear Lewis,

“You broached yesterday evening what seems to me a political heresy, which I hope was only a conversational paradox, and not a deliberately adopted theory. You said you dissented from the maxim that prevention is better than cure, and that you thought that, instead of trying to prevent an evil, we ought to wait till it had happened, and should then apply the proper remedy. Now I beg to submit that the prevention of evil is the proper function of statesmen and diplomatists; and that the correction of evil calls forth the action of generals and admirals. Evils are prevented by the pen, but are corrected by the sword. They are prevented by ink-shed, but can be corrected only by blood-shed. The first is an operation of peace; the second, the action of war.

“It seems to me to be no valid argument to say that measures taken to prevent an evil may by possibility lead to war, when it can be shown to be far more probable that the evil, if it happens, will lead to that result.

“There are endless instances of serious conflicts which might have been prevented by timely vigor and negotiation, and an equal number of cases in which timely vigor and activity have averted dangerous consequences. If the Duke of Wellington's Government, in 1830, had not been swayed by the same timidity which prevailed in the Cabinet yesterday, the French would not now have had Algeria—a possession which, whenever we have a war with France, will give us trouble and cause us much annoyance. If Lord Aberdeen's Government had shown less timidity when the Russians prepared to invade the Danube Principalities, it is pretty certain that we should not have had the Russian war; but it is needless to multiply examples to prove what appear to me to be self-evident propositions.

“Yours sincerely,

“PALMERSTON.”

“Kent House, November 23, 1860.

“My dear Lord Palmerston,

“As a medical maxim, it is true universally that prevention is better than cure; but it seems to me that this maxim must



preparations for war such as arming to the teeth and fortifying its frontier, it cannot be expected that it

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be applied with discretion in political, especially in foreign, politics. If the evil is proximate and certain, or highly probable, no doubt a wise statesman will, if he can, prevent it. But with respect to remote and uncertain evils, the system of insurance may be carried too far. Our foreign relations are so numerous and so intricate, that if we insure against every danger which ingenuity can devise there will be no end of our insurances. Even in private life it is found profitable for those who carry on operations on a large scale not to insure. One thing, according to the received though not very precise saying, insures another. A man who has one or two ships, or one or two farmhouses, insures. But a man who has many ships, and many farmhouses, often does not insure.

“We keep in every country of the world a paid agent, often of great activity and intelligence, whose time in general is only half employed, and whose business it is to frighten his own government with respect to the ambitions and encroaching designs of foreign governments. I am not seeking to undervalue the services of diplomatic and consular agents. I know that, on the whole, they are of great benefit to the country which employs them; but it is natural and proper that they should keep a sharp look-out for the machinations of foreign governments, and that their imagination should sometimes be stronger than their reason. If their advice was listened to, we should be perpetually taking expensive precautions against remote and problematical risks.

“Generally, I think that our foreign policy is too timorous; that we are apt to be scared by bug-bears, and to underrate the power of England, and the fear of it entertained by foreign nations. I do not believe that the possession of Algeria by France is any real disadvantage to us. It acts as a constant drain on the military and financial resources of France, and in the event of a war would necessarily fall into our hands, if we were able to obtain and maintain the empire of the sea. The possession of Egypt and Malta did nothing for France in the late war.

“If an evil is certain and proximate, and can be averted by diplomacy, then undoubtedly prevention is better than cure. But if the evil is remote and uncertain, then I think it better not to resort to preventive measures, which insure a proximate and certain mischief. The evil may probably never occur; the cure may perhaps be simple and inexpensive,

will permit interference with a state's enjoyment of its right to grow and to develop its resources, even though the increase of territory and resources should give a preponderance of power.

Grotius in his great work, "War and Peace," published in Latin in 1625, wrote: "There is an intolerable

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and may not imply hostilities. It seems to me that our foreign relations are on too vast a scale to render it wise for us to insure systematically against all risks; and if we do not insure systematically, we do nothing."

"Believe me,

"Yours very sincerely,

"G. C. LEWIS."

(Ashley's Life of Palmerston, vol. II, 1876, p. 331-4.)

The same opinion was held by Cobden, who, Morley writes, "opposed war, because war and the preparation for it consumed the resources which were required for the improvement of the temporal condition of the population. Sir Robert Peel had anticipated him in pressing upon Parliament the danger to European order arising from military expenditure. Heavy military expenditure, he said, meant heavy taxation, and heavy taxation meant discontent and revolution. That wise statesman had courageously repudiated the old maxim, *Bellum para si pacem velis*. A maxim that admits of more contradiction, he said, or one that should be received with greater reserve, never fell from the lips of man. What is always still more important, Peel was not afraid to say that it is impossible to secure a country against all conceivable risks. If in time of peace you insist on having all the colonial garrisons up to the standard of complete efficiency, and if every fortification is to be kept in a state of perfect repair, then no amount of annual expenditure can ever be sufficient. If you accept the opinions of military men, who tell a Minister that they would throw upon him the whole responsibility in the event of a war breaking out, and predict the loss of this or the other valuable possession, then the country must be overwhelmed by taxation. It is inevitable that risks should be run. Peel's declaration was, and must at all times remain, the language of common sense, and it furnished the key to Cobden's characteristic attitude towards a whole class of political questions where his counsels have been most persistently disregarded." (Morley: Life of Richard Cobden, 1881, p. 357-8.)

doctrine in some writers, that by the Law of Nations we may rightly take arms against a power which is increasing, and may increase, so as to be dangerous. Undoubtedly, in deliberating of war, this may come into consideration, not as a matter of justice, but as a matter of utility; so that if the war be just on other accounts, it may, on this account, be prudent; and this is what the arguments of authors come to. But that the possibility of suffering force gives us the right of using force, is contrary to all notion of equity. Such is human life, that we are never in complete security. We must seek protection against uncertain fears from Divine Providence, and from blameless caution, not from force." (Grotius, Bk. II, ch. I, § XVII, Whewell's translation, vol. I, p. 224-5.)

Emer de Vattel, in his *Law of Nations*, 1758, expressed a similar view: "We are here presented with a celebrated question which is of the greatest importance. It is asked whether the aggrandizement of a neighboring state, in consequence of which a nation fears that it will one day be oppressed, is a sufficient ground for making war upon it; whether a nation can with justice take up arms to resist the growing power of that state, or weaken the state, with the sole object of protecting itself from the dangers with which weak states are almost always threatened from an over-powerful one. The question presents no difficulties to the majority of statesmen; it is more perplexing for those who seek at all times to unite justice with prudence.

"On the one hand, a state which increases its power by all the efforts of a good government does nothing but what is praiseworthy; it fulfils its duties toward itself and does not violate those which it owes to other nations. The sovereign who by inheritance, by a free election, or by any other just and proper means, unites

new provinces or entire kingdoms to his states, is merely acting on his right, and wrongs no one. How would it be right to attack a state which increases its power by lawful means? A nation must have received an injury, or be clearly threatened with one before it is authorized to take up arms as having a just ground for war. On the other hand, we know only too well from sad and frequent experience that predominant states rarely fail to trouble their neighbors, to oppress them, and even to subjugate them completely, when they have an opportunity of doing so with impunity. Europe was on the point of being enslaved for lack of timely opposition to the growing power of Charles V. Must we await the danger? Must we let the storm gather strength when it might be scattered at its rising? Must we suffer a neighboring state to grow in power and await quietly until it is ready to enslave us? Will it be time to defend ourselves when we are no longer able to? Prudence is a duty incumbent upon all men, and particularly upon the rulers of nations, who are appointed to watch over the welfare of an entire people. Let us try to solve this important question conformably to the sacred principles of the Law of Nature and of Nations. It will be seen that they do not lead to weak scruples, and that it is always true to say that justice is inseparable from sound statesmanship.

“First of all, let us observe that prudence, which is certainly a virtue very necessary in sovereigns, can never counsel the use of unlawful means in order to obtain a just and praiseworthy end. Do not object here that the welfare of the people is the supreme law of the state; for the welfare of the people, the common welfare of nations, forbids the use of means that are contrary to justice and honor. Why are certain means unlawful? If we look at the matter closely, if we go back to first principles, we shall see that it is

precisely because the introduction of such means would be hurtful to human society, a source of evil to all nations. Note in particular what we said in treating of the observance of justice (Book II, ch. V). It is, therefore, to the interest and even to the welfare of all nations that we must hold as a sacred principle that the end does not justify the means. And since war is only permissible in order to redress an injury received, or to protect ourselves from an injury with which we are threatened, it is a sacred rule of the Law of Nations that the aggrandizement of a state cannot alone and of itself give any one the right to take up arms to resist it.” (Vattel: Bk. III, §§ 42-43; Carnegie translation, p. 248.)

The most eminent of all of the modern international jurists, John Westlake, nearly three centuries after Grotius, has given us a concise statement which covers the right to grow and to arm: “The natural growth of a nation in power, and even the increase of its armaments in a fair proportion to its population and wealth and to the interests which it has to defend, must be looked on without jealousy, and without any attempt to check it, by those nations which by an inferiority of character or situation are destined to a decline in relative power.”<sup>99</sup> (Westlake: *International Law*, vol. I, 1910, p. 316-7.)

The protection of the general prosperity of nations is the primary aim of international law. It can never seek to arrest progress and prosperity in order to fa-

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<sup>99</sup>A few of the authorities who express the same view that innocent growth is not a just ground of intervention are: G. F. de Martens: *Précis*, Bk. IV, ch. I, § 120; Klüber, *Europäisches Völkerrecht* § 41; Wheaton: *Elements*, Part II, ch. I, § 3; Woolsey: *International Law*, 1860, § 42, p. 91; Twiss; *Law of Nations*, vol. I, § 101, p. 147-8; Creasey: *First Platform*, § 163, p. 152-3.

cilitate the task of preventing possible injustice, but must hope to find some other means of restraining the abuses of power. The right of every independent state to employ the means at its disposal to develop its resources and to arm for protection against attack is as clear as any right of international law.

### CONSTRUCTIVE ATTACK

To justify preventive action, it is not essential that the hostile preparations should be undertaken by the government itself. Whenever a government lends its countenance to individuals who are making hostile preparations within its territory, or even when the government does no more than fail to fulfil the obligations which international law imposes upon it to police its territory and to suppress the fitting out of hostile expeditions, it becomes responsible for the illicit acts which it has tolerated, or failed to prevent.<sup>90</sup>

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<sup>90</sup>Phillimore has accurately discussed this principle:

“In all cases where the territory of one nation is invaded from the country of another,—whether the invading force be composed of the refugees of the country invaded, or of subjects of the other country, or of both—the government of the invaded country has a right to be satisfied that the country from which the invasion has come, has neither by *sufferance* nor *reception* (*patientia aut receptu*) knowingly aided or abetted it. She must purge herself of both these charges, otherwise, if the cause be the feebleness of her government, the invaded country is warranted in redressing her own wrong, by entering the territory, and destroying the preparations of war therein made against her; or, if these have been encouraged by the government, then the invaded country has a strict right to make war upon that country herself; because she has afforded not merely an asylum, but the means of hostility to the foes of a nation, with whom she was at peace. For it never can be maintained, that however much a state may suffer from piratical [sic] incursions, which the feebleness of the executive government of the country whence they issue renders it incapable of preventing or punishing, that, until

No doubt the best intentioned state cannot always prevent the abuse of its territory and its use as a base for hostile expeditions against a friendly state. But in that event, as we have seen, the state whose security is threatened has the right to intervene directly by way of self-help, and to remove the menace to its security. Should the state who was unable to police its own territory attempt to oppose this reasonable recourse to preventive action, it becomes itself responsible for the hostile preparations made on its territory, and preventive war then becomes justifiable against the government itself.<sup>91</sup>

When a state feels itself menaced by plots and preparations in a neighboring state, it is inclined to hold the latter responsible, even though the government itself is

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such government shall voluntarily acknowledge the fact, the injured State has no right to give itself that security, which its neighbor's government admits that it ought to enjoy, but which that government is unable to guarantee.

"It must be admitted that there is a practical acknowledgment of such inability, which, as much as a voluntary confession, justifies the offended country in a course of action which would under other circumstances be unlawful." (Phillimore: *International Law*, vol. I, 1854, § 215, p. 230.)

Phillimore supports his own opinion by a quotation from Burlamaqui which was itself based upon the opinion of Grotius: Bk. II, ch. xxi and from Heineccius (*Prælectiones*) on the same chapter of Grotius: "Now it is presumed that a sovereign knows what his subjects openly and frequently commit: and as to his power of hindering the evil this likewise is always presumed, unless the want of it be clearly proved."

This matter is treated by Vattel with his customary elegance of expression and with a juridical accuracy which this author does not always display. Vattel, Bk. II, § 72-8.

<sup>91</sup>See discussion of self-help § 1 above: see also Hall: *International Law*, 4 ed., § 54, p. 282; *ibid.* § 91, p. 299.

The same principle justifies the use of force against vessels under another flag when they are engaged in filibustering expeditions. (See Westlake: *International Law*, vol. I, p. 168-172, 313.)

not implicated and when it has done its best to police its territory. Dissatisfaction with the result sometimes leads the menaced state to demand that more stringent laws be passed to permit of a greater vigilance. The other may be justified, however, in considering that the existing regulations go as far as is possible without interfering with the rights of its citizens and subjecting them to unreasonable restrictions. The precedents of international practice have to be consulted for the purpose of defining the obligations which international law imposes upon every state for the police of its territory. But when a government refrains from using the authority which it possesses, its conduct is either so unfriendly or so culpably negligent as to render it directly responsible for the hostile acts preparing against its neighbor, and to justify the latter in intervening to compel the delinquent state to reform its conduct.<sup>22</sup>

<sup>22</sup>Westlake justifies intervention in the internal affairs of another state to prevent attack and he defines attack as we have said to include all violation of the legal rights of a state or of its subjects, "whether by the offending state or by its subjects without due repression by it, or ample compensation when the nature of the case admits compensation. And by due repression we intend such as will effectually prevent all but trifling injuries (*de minimis non curat lex*), even though the want of such repression may arise from the powerlessness of the government in question." (Westlake: International Law, vol. I, p. 313.)

If, in place of this juridical opinion, we were to accept the extreme view of Funck-Brentano and Sorel, we should be forced to conclude that any state could make an excuse of the defects of its own legislation to avoid responsibility. These authors write: "Intervention most frequently occurs when the actions of the government of a state or of its subjects are made the basis of a diplomatic complaint. The motives for this intervention are usually attacks in the press against foreign governments, and the existence of secret societies and conspiracies. As long as a state only demands from another state the strict and loyal enforcement of the latter's laws, it



Phillimore discussing this matter remarks: "Upon the same principle, though a nation has a right to afford refuge to the expelled governors, or even the leaders of rebellion flying from another country, she is bound to take all possible care that no hostile expedition is concerted in her territories, and to give all reasonable guarantees upon this subject, in answer to the remonstrances of the nation from which the exiles have escaped. During the time when the residence of the Pretender in France within the vicinity of England, gave reasonable alarm to the British Government, the removal of his residence to a place of less danger to

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does not exceed its rights, and does not commit an act of intervention in the interior affairs of the state: it merely asks for the respect which is due it in the form which is compatible with the constitution of the state to whom the request is addressed. Intervention begins when the demanding state declares that the institutions of the foreign state are not adequate to assure the state making the representations the respect to which it has a right and the security of which it is in need, and when it demands a modification. Even in diplomatic form, such an intervention is a violation of the law of nations in time of peace. It is so clearly a violation, and is based so truly upon force and upon force alone, that there is no case in which it has been employed other than by strong states against weaker states: nevertheless, it is the weak states which are most often likely to find it necessary to employ it: the press and secret societies of the great states are much more dangerous to the security of the small states than the journalists and conspirators in the little states are to the great." (Translated from Funck-Brentano et Sorel: *Précis du Droit des Gens*, p. 218-9.) This exaggerated statement is of value as an indication of the basis of the sovereign right of each state to adhere to its own institutions.

Sir George Cornwall Lewis (*Extradition*, 1859, p. 65) declares that "the law of England recognizes the principle of protecting a foreign government by its own municipal regulations." In footnotes, he gives several references.

Phillimore (1 ed., Vol. I, § 213, p. 227), well states the right of self-help in the case of culpable negligence and asylum for hostile expeditions, and (*Ibid.*, § 214, p. 227) quotes Vattel (*Vol. III*, ch. VII, § 133.)

Great Britain formed the subject of the stipulations of various Treaties. If the hostile expedition of the present Emperor of the French in 1842, against the then existing monarchy of France, had taken place with the sanction or connivance of the British Government, England would have been guilty of a very gross violation of International Law; and she showed at the time a wise and just anxiety to purge herself from any such suspicion. But though the strange and almost unparalleled vicissitudes of fortune afterwards compelled the very monarch, against whom that expedition had been directed, to take refuge in this country, the then representative of the executive of France, though the leader of that expedition, had no cause of complaint, either on this ground, or because other political refugees, professing all shades and kinds of opinion, resided in safety in England; which, before it was their refuge, had so often been, and indeed still is, the theme of their vituperation."<sup>33</sup> (Sir Robert Phillimore: Commentaries Upon International Law, 1854, vol. I, § 217, p. 228-230.)

Condorcet, in an exposition of motives, prepared in 1792 for the French National Assembly, declared: "By protecting the assemblages of the emigrants, by permitting them to menace our frontiers, by showing troops in readiness to second them on the first success, by preparing a retreat for them, by persisting in a threatening league, the King of Hungary obliged France to make preparations of defense ruinous in their expense, exhausted her finances, encouraged the audacity of the conspirators dispersed through the departments, excited uneasiness among the citizens, and thus fomented in them and perpetuated trouble. Never

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<sup>33</sup>The reader will remember that we discussed above, under § 8 (f) this question of political asylum.

did hostilities more really justify war; and to declare was only to repel it." (Annual Register, vol. 34, 1792, p. 265.)

### HOSTILE PROPAGANDA

An interesting question arises when the action alleged to be a menace is confined to hostile propaganda, such as an incitement to revolt. Vattel was right: "It is in violation of the Law of Nations to call on subjects to revolt when they are actually obeying their sovereign, although complaining of his rule." (Vattel, Bk. II, § 56, Carnegie translation, p. 131.) Such conduct is a violation of the sovereign rights of a friendly state, and justifies whatever reasonable action may be necessary to secure redress. Nevertheless, it is not customary for the great civilized states to make acts of propaganda a ground of complaint, provided that none but private citizens participate in them, and that the acts, however hostile in sentiment, are confined to demonstrations such as parades, mass meetings, etc.<sup>94</sup>

Professor Manning and many others have applied this rule to the French Convention's proclamation of November 19, 1792. He says: "When the French Convention announced themselves as the enemies of all constituted authorities, and proclaimed, in November, 1792, that 'they would grant fraternity and succor to

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<sup>94</sup>The Greek war of independence, the Polish insurrections of 1832 and 1863, the Hungarian uprising of 1849 (see Moore's *Principles of American Diplomacy*, p. 202f), and the Boer War of 1898-99, called forth mass meetings and very warm expressions of public opinion throughout the civilized world. In as far as these demonstrations were merely popular, they offered no ground for protest on the part of the governments concerned, but could only serve as a helpful warning of a general disapprobation which any wise government would take into account.

any people who were disposed to recover their liberty,"<sup>10</sup> it cannot be doubted that, if there were a probability of these declarations being carried into effect, it was not only the right, but the duty, of neighboring governments to arm in their own defense; and, if there were no other method of averting the threatened aggression, encounter the partial evil to the community, war, great as that evil is, rather than submit to that total ruin of the community which must result from the forcible propagation of anarchy." (Commentaries on the Law of Nations, revised by Sheldon Amos, p. 134.)

" 'If,' wrote Mr. Canning in 1823, 'if the end of the last and the beginning of the present century saw all Europe combined against France, it was not on account of the international changes which France thought necessary for her own political and civil reformation, but because she attempted to propagate first her principles and afterwards her dominion by the sword.' " (Quoted from Bernard: Non-Intervention, p. 12-13.)

Lord Grey, discussing non-intervention [interference], said in 1821 (Parliamentary Debates, House of Lords, Feb. 19, 1821, cited by Bernard, Non-Intervention, p. 13): "When the government of one nation holds out encouragement to the subjects of another to resist its authority, or offers assistance to rebellious projects, a state of things occurs which admits a departure from the general principles of international law." Professor Bernard comments: "In truth it is no departure from them, for the revolution by becoming aggressive has ceased to be 'internal,' and the measures of self-defense which it justifies are not intervention [interference], but war." (Bernard: Non-Intervention, 1860, p. 13.)

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<sup>10</sup>Manning's reference is to Alison, *Hist. French Rev.* I, 433, 434.

Prior to the outbreak of the War of 1914, Austria-Hungary complained that the Servian Government encouraged the propaganda of the Servian press and of the patriotic societies for the annexation of parts of the Austrian Empire inhabited by people of the Servian race. It was probably impossible for the Servian Government to have attempted to suppress a movement so widespread, or to have openly repudiated it. But it was not shown that the government did not do all in its power to keep the agitation within such reasonable limits as it was able. No doubt hostile propaganda such as prevailed in Servia might have been considered a ground of remedial self-help, even to the extent of war, had Austria's security demanded it. But in view of Austria's overwhelming superiority, this justification was lacking. A respect for the peace of Europe might also have been expected to stay Austria's recourse to force.<sup>96</sup>

The very active propaganda carried on by the Bolsheviki of Russia is an excellent example to illustrate these principles, and in this connection it will be of interest to examine that portion of Secretary Colby's note of August 10, 1920, in which he took occasion to discuss the grounds upon which the Wilson Administration refused to recognize or have any dealings with the Soviet Government of Russia: "It is not possible for the government of the United States to recognize the present rulers of Russia as a government with which the relations common to friendly government can be maintained. This conviction has nothing to do with any particular political or social structure which the Russian people themselves may see fit to embrace. It rests upon a wholly different set of facts. These facts, which

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<sup>96</sup>See discussion above of Hostile Expeditions. The Austro-Servian question is examined in E. C. Stowell: *Diplomacy of the War of 1914*, p. 77-8.

none dispute, have convinced the Government of the United States, against its will, that the existing régime in Russia is based upon the negation of every principle of honor and good faith, and every usage and convention, underlying the whole structure of international law; the negation, in short, of every principle upon which it is possible to base harmonious and trustful relations, whether of nations or of individuals. The responsible leaders of the régime have frequently and openly boasted that they are willing to sign agreements and undertakings with foreign powers while not having the slightest intention of observing such undertakings or carrying out such agreements. This attitude of disregard of obligations voluntarily entered into, they base upon the theory that no compact or agreement made with a non-Bolshevist government can have any moral force for them. They have not only avowed this as a doctrine, but have exemplified it in practice. Indeed, upon numerous occasions the responsible spokesmen of this power, and its official agencies, have declared that it is their understanding that the very existence of Bolshevism in Russia, the maintenance of their own rule, depends, and must continue to depend, upon the occurrence of revolutions in all other great civilized nations, including the United States, which will overthrow and destroy their governments and set up Bolshevist rule in their stead. They have made it quite plain that they intend to use every means, including, of course, diplomatic agencies, to promote such revolutionary movements in other countries.

“It is true that they have in various ways expressed their willingness to give ‘assurances’ and ‘guarantees’ that they will not abuse the privileges and immunities of diplomatic agencies by using them for this purpose. In view of their own declarations, already referred to, such assurances and guarantees cannot be very seri-

ously regarded. Moreover, it is within the knowledge of the Government of the United States that the Bolshevik Government is itself subject to the control of a political faction, with extensive international ramifications through the Third Internationale, and that this body, which is heavily subsidized by the Bolshevik Government from the public revenues of Russia, has for its openly avowed aim the promotion of Bolshevik revolutions throughout the world. The leaders of the Bolsheviks have boasted that their promises of non-interference with other nations would in no wise bind the agents of this body. There is no room for reasonable doubt that such agents would receive the support and protection of any diplomatic agencies the Bolsheviks might have in other countries. Inevitably, therefore the diplomatic service of the Bolshevik Government would become a channel for intrigues and the propaganda of revolt against the institutions and laws of countries, with which it was at peace, which would be an abuse of friendship to which enlightened governments cannot subject themselves.

“In the view of this Government, there cannot be any common ground upon which it can stand with a power whose conceptions of international relations are so entirely alien to its own, so utterly repugnant to its moral sense. There can be no mutual confidence or trust, no respect even, if pledges are to be given and agreements made with a cynical repudiation of their obligations already in the mind of one of the parties. We cannot recognize, hold official relations with, or give friendly reception to the agents of a government which is determined and bound to conspire against our institutions; whose diplomats will be the agitators of dangerous revolt; whose spokesmen say that they sign agreements with no intention of keeping them.”

(Printed in International Conciliation Pamphlet, No. 155, October, 1920.)

In a note of August 14, 1920, the French Chargé at Washington reiterated the opinions expressed by Secretary Colby, and declared that his government could have no official relations with the present rulers of Russia. He also stated that after mature examination, the French Government had "recognized a Russian Government which declares that it accepts the same principles" which means as the context shows, the same as those expressed by the French and American Governments in regard to Russia and Poland. (Ibid, p. 470.)

During the past months, sympathizers with the Irish insurrection have been holding mass meetings and parading about the streets of Washington, and pulling down British flags in the streets of New York. Some of the most ardent agitators picketed the British Embassy until the police authorities stepped in. The federal authorities have not intervened except to protect the British Embassy, nor does it appear that the British Government has entered any protest.

On St. Patrick's Day, John F. Harrigan, State President of the Massachusetts Council of the American Association for the Recognition of the Irish Republic, telegraphed President Harding, "In the name of 125,000 citizens" of the State, to "demand action"... "now," and that he revoke the orders of the officers at Boston who had refused to allow men in uniform to parade when they were informed that the above mentioned association intended to participate.

After President Harding had conferred with his Cabinet, his Secretary, Mr. Christian, sent the following reply: "Your telegram has been called to the attention of the President and he directs me to say in reply that army and navy commanders have authority



to direct the forces under their command. The government raises no issue about the fitness of your celebration of evacuation day and the spirit of St. Patrick's day is felt throughout our country, but the naval and military forces of the nation can have no part in any demonstration which may be construed as influencing the foreign relations of the republic." (*Washington Post*, March 18, 1921.)

To have adopted any other course would have amounted to an interference in the internal affairs of a friendly state.

It is not enough that a state should refrain from inciting to revolt. It must, as we have already seen, be careful not to attempt to use its agents or its influence directly to carry on a propaganda abroad, even though it may believe this to be for the best interest of the other state."

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"This duty of refraining from any violations of the sovereignty of the other state is discussed above, § 12.

The limits within which a state should restrict its efforts at propaganda, political or religious, are indicated in a letter Frederic Rogers (Lord Blachford) wrote regarding the appointment of missionary bishops in the Turkish Empire:

"My dear Lord Bishop,—I am rather afraid of being misunderstood about your Bill, a copy of which has just reached me.

"I, of course, think it is a just claim of the English Church to be allowed to consecrate Missionary Bishops, and as a Churchman I shall be extremely glad if your particular Bill passes as it stands.

"But I think that in your Bill the State is entitled to take this objection—the Bill proposes to invest a Bishop in a Mahomedan country—say of Mecca—with a statutory relation to the Church of England, that is to say, to attach him remotely, but really, to the constitution of this country of which the Church is a part.

"Now, this Bishop of Mecca is not a mere Bishop of English congregations, but a Missionary Bishop bound in that capacity to make war upon Mahomedanism, which is, on the other hand, part of the political constitution of the Ottoman Empire.

## DOCTRINE OF CONTAGION

The advent of a revolutionary government in a neighboring state or the prevalence within its borders of peculiar beliefs and practices cannot be considered by

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“Now, the Ottoman Empire having been to a certain extent admitted into the family of nations, is it according to the comity of nations that the English Parliament should take under its wing an organized attack on the constitution of that Empire? The Pope, no doubt, does it in England, but first he does it under shelter of certain principles of toleration, which we profess, and which it appears to me are sufficient to cover his aggression; and next we, notwithstanding, quarrel with him for doing it.

“You will answer that the Crown may, under your Bill, prevent any such complications by refusing its assent to the creation of any Bishopric which is calculated to cause them.

“This is one of those answers which is good or bad according to the animus of the person to whom it is addressed. A rash or careless Minister may authorize the erection of an Anglican Bishopric in a place where its erection would be politically unjustifiable. The question is whether the advantage (of setting the Church going in a missionary direction) justifies the risk of an ill-advised appointment causing a complication with a foreign country.

“Personally, I think it does (and therefore wish well to your Bill), but if I held the well-being of the English Church a matter of little importance to this country I should think differently, and should think that the Parliament had a right to some more distinct guarantee (to speak as a politician) against the abuse of the powers of consecration.

“Even personally I prefer our colonial principle of proceeding, the principle, namely, of leaving Bishops to consecrate in virtue of their inherent spiritual powers, and leaving the consecrating and consecrated to arrange for themselves what shall be their relation to each other. In this case, the State is subject to no responsibility (colonial Bishops being no part of the Constitution), and is therefore entitled to no control over the missionary operations of the Church.

“I should therefore have liked best to see a Bill (though it would have been perhaps very difficult to draw one) which would merely have permitted the Church to create an Episcopate beyond the limits of the Queen's Dominions, leaving the relations of that Episcopate to be formed by mutual consent without any statutory aid or the necessity of any Royal assent.

their mere example so to endanger the security of other states as to justify intervention.

To quote from Professor Bernard: "It may be said with confidence, I think, that interference in the internal affairs (as we have defined them) of a foreign State never can be a necessity, unless it be a self-made necessity. As long as what is passing in your neighbor's house does not directly concern you, there cannot be that pressing call for self-defense, that clear, formidable, imminent danger, which the plea assumes. People of sickly constitution may take fright at the possibility of infection, and misgoverned countries may be agitated by every turbulent movement elsewhere; but in a despotically governed country there is no such right to uphold a despotism, nor in a republican country to maintain a republic, as would warrant an interference with the clear indisputable right of surrounding nations to change their institutions at pleasure."

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"But I repeat, in default of this, I should consider your Bill as likely to be of great advantage, and wish it success." (Letters of Frederic Lord Blachford, edited by George Eden Marindin, 1896, p. 234-6.)

<sup>98</sup>In regard to propaganda of objectionable doctrines, Heiberg, who may be called the dean of authorities upon the subject of intervention, remarks: "A state which can be ruined in this wise, must either be tottering, and out of touch with higher civilization [Kultur], or the ideas and danger-laden system which has gained recognition in the state from which the danger threatens must have truth in them." (Translated from *Nicht-Intervention*, 1842, p. 15-16.) Heiberg refers to the views of the elder Rotteck against interference on account of revolutionary troubles, which called forth a counter opinion from one Dr. Trummer, who considered that states are so nearly affected by what happens across their borders that intervention cannot always be avoided.

Ott's French edition of Klüber (§ 237, p. 308) contains an interesting note (e) condemning interference because of the fear, real or alleged, of "a moral invasion, an intellectual contagion, a political epidemic." References to other authorities are also given.

(Bernard: Non-Intervention, 1860, p. 12-13, quoting Canning, Debates, House of Lords, Feb. 19, 1821.)

The wars of the French Revolution were ushered in with an appeal to the doctrine of contagion. In the manifesto issued August 4, 1792, by the Emperor of Germany and the King of Prussia they declare their intention of destroying in France "every spark of insurrection, which might continually threaten and endanger the welfare of all sovereigns, and all nations." (Annual Register, 1792, p. 236, 252.) This recalls the witty retort of a Frenchwoman in sympathy with the Revolution: "What you believe to be a conflagration is only an illumination." (Krug: Dikapolitik, 1824, p. 332.)

The Holy Alliance of the autocratic powers under the leadership of Metternich attempted to enforce the doctrine and to suppress revolutionary movements in the European states upon the ground of preventing the danger to their own security from the spread of revolution. The Preliminary Protocol of Troppau contained the following declaration: "States which have undergone a change of government due to revolution, the results of which threaten other states, *ipso facto* cease to be members of the European Alliance, and remain excluded from it until their situation gives guarantees for legal order and stability. If, owing to such alterations, immediate danger threatens other states, the powers bind themselves, by peaceful means, or if need be by arms, to bring back the guilty state into the bosom of the Great Alliance."<sup>2</sup> (W. A. Phillips: The Confederation of Europe, p. 222.)

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<sup>2</sup>After Westlake has justified "the decision of the great powers in 1815 to exclude Napoleon from the throne of France, as a man the experience of whose conduct precluded belief in any protestations of peacefulness which he might make," he remarks: "With this must be strongly contrasted the at-

W. A. Phillips, in his "Confederation of Europe," relates how seriously Alexander I of Russia was in-

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tempt which during a few years after the congress of Vienna was made by the continental great powers to rule Europe on the principle of legitimacy. In the circular dispatch which, on the occasion of the insurrection at Naples, the courts of Austria, Russia and Prussia dated from Troppau, 8 December 1820, they said that 'the powers have exercised an incontestable right in occupying themselves with taking in common measures of security against states in which the overthrow of the government by a revolt, even could it be considered only as a dangerous example, must have for its consequence a hostile attitude against all constitutions and legitimate governments.' This was to assert a right of self-preservation against the contagion of revolution; to deny to a nation the right of establishing for itself free institutions, by force if they cannot otherwise be attained, lest the example should be dangerous to autocratic governments in other countries. The true principle was expressed by Canning, when on 31 March 1823, on the occasion of the French intervention against the government which had been established by insurrection in Spain, he wrote to the British ambassador at Paris: 'No proof was produced to his majesty's plenipotentiary of the existence of any design on the part of the Spanish government to invade the territory of France, of any attempt to introduce disaffection among her soldiery, or of any project to undermine her political institutions; and so long as the troubles and disturbances of Spain should be confined within the circle of her own territory, they could not be admitted by the British Government to afford any plea for foreign interference. If the end of the last and the beginning of the present century saw all Europe combined against France, it was not on account of the internal changes which France thought necessary for her own political and civil reformation, but because she attempted to propagate first her principles, and afterwards her dominion, by the sword.' " (Westlake: *International Law, Part I, Peace*, p. 318-319.)

Westlake adds the following in a footnote: "We quote the last sentence only for the principle, without implying anything as to the historical accuracy of the judgment passed by Canning on the wars of the French revolution, further than that it was certainly a true judgment so far as concerns the part taken in those wars by Great Britain. (Ibid.) Bernard as we have indicated above quotes from this same speech with approval. (Bernard: *Non-Intervention*, p. 12-13.)

fluenced by the news of the revolt of his favorite regiment in October, 1820. This incident may serve to illustrate the excesses into which unfounded apprehensions may lead autocratic power in the defense of a cherished doctrine: "This regiment," writes Mr. Phillips, "of which as Cesarevich he had been Colonel-in-chief, had supplied the guard at the Michael Palace on the night of Paul's murder and had since been treated by Alexander with special favor. A military power such as Russia, as the Emperor explained to Wellington, could not afford to tolerate military revolutions in other countries, the example of which might prove infectious; and now his worst fears were realized. In vain it was pointed out to him, by all those best able to judge, that no political motives underlay the action of the soldiers, who had been goaded to revolt solely by the intolerable tyranny of their colonel, a stupid and cruel Prussian martinet. Alexander insisted that the mutiny was the outcome of the conspiracy of the Carbonari, who had spread their network over all Europe and covered even the soil of Holy Russia. Crowning proof of his own folly! In the person of Napoleon he had thought to overthrow the Beast; and behold! it was not incarnate in one man, but a 'many-headed monster thing' of which, in his blindness, he had himself encouraged the growth. At least his eyes were opened, by the Providence of God, before it was too late, and his duty was clear. To the servants of the Evil One no mercy must be shown; he set aside as too lenient the sentences passed by the court-martial on the ringleaders of the mutiny—two corporals and five poor privates—and ordered that they should receive six thousand strokes apiece. Thus in Holy Russia at least the Lord's will could be done. As for Europe at large, to Alexander God's will was now equally clear. He searched the Scriptures, and found in the most un-

likely places—in the stories of Nebuchadnezzar and of Judith and Holofernes, and in the Epistles of St. Paul—Divine lessons applicable to the perils of the hour. To the principle of Evil, bastard brood of Voltairean philosophy falsely so called, must be opposed the principle of Faith, which found its supreme expression in that revelation of the Most High—the Holy Alliance. Stripped of its verbiage, this meant that in Alexander's view the Alliance was henceforth to be used as a force purely conservative, if not reactionary." (W. A. Phillips: *The Confederation of Europe*, p. 219-221.)

Whatever authority the doctrine of contagion may have once derived from the great force of the combined power of the Holy Alliance interested in enforcing it has now entirely disappeared. In place of this attempt to legalize interference, international law recognizes that no state has a right of intervention merely on the ground that the doctrines preached in another country or the pernicious example of its institutions endanger the state's security.

Notwithstanding the complete recognition of the illegality of interference of the kind we have been discussing, governments responding to the currents of public opinion are certain to transgress the rule in the future as they have done in the past. The difficulty in preventing this lies in finding any adequate check upon the waves of popular emotion which the government of even the most enlightened of the modern states are powerless to resist.<sup>1</sup>

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<sup>1</sup>Nassau Senior, discussing interference of this kind, points out the flimsy basis upon which it is justified, declaring that the circumstances which create the "supposed inconvenience or danger arising to other nations from events occurring in the interior of a country" are "incapable of definition, and generally incapable of proof. If," he continues, "we examine the statements of evils suffered or apprehended from the domestic affairs of independent nations, on which the

John Stuart Mill touches upon the real cause of the vitality of this false doctrine of contagion when in a letter discussing the settlement of international differences, he writes: "When the nations of Europe shall have given up national hatreds and schemes of national aggrandizement, and when their institutions shall be sufficiently assimilated to prevent any of the governments from seeing in the greatness and prosperity of another state a danger to its power over its own people, they will probably be all so sincerely desirous of peace that they will never dream of any other than an amicable settlement of any accidental differences that may still arise. And every step taken in the improvement of the intelligence and morality of mankind brings this happy result a little nearer." (The Letters of John Stuart Mill, edited by Hugh S. R. Elliot, London, 1910, vol. II, p. 296.) But that day seems as far removed as is the abandonment of interference to check abhorrent doctrines and to suppress hated institutions.

In conclusion, we will reaffirm the correct view by quoting the concise statement of Hall: "When however the danger against which intervention is levelled does not arise from the acts or omissions of the state,

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most remarkable modern interventions have been founded, we shall find them in general too vague to be susceptible of refutation, or too frivolous to deserve it..."

"A remarkable similarity runs through all the state papers in which this right of intervention is asserted. They generally begin by disclaiming the wish to interfere with the affairs of any independent state; they then state the inconveniences suffered by their own frontiers, in consequence of the disturbed state of their neighbors; they add that the doctrines professed, and the examples held out, are subversive of the general tranquility of Europe, and particularly of that of their own dominions: and they therefore propose to take military possession of the disturbed country, with no views of aggrandizement, but simply in self-defense." (Nassau Senior: The Law of Nations, Edinburgh Review, April, 1843, p. 334-6.)



but is merely the indirect consequence of the existence of a form of government, or of the prevalence of ideas which are opposed to the views held by the intervening state or its rulers, intervention ceases to be legitimate. To say that a state has a right to ask a neighbor to modify its mode of life, apart from any attempt made by it to propagate the ideas which it represents, is to say that one form of state life has a right to be protected at the cost of the existence of another; in other words, it is to ignore the fundamental principle that the right of every state to live its life in a given way is precisely equal to that of another state to live its life in another way." (Hall: International Law, 4 ed., § 91, p. 299-300.)

#### § 16. SELF-PRESERVATION

There are some writers who assert that when a state believes that the preservation of its existence can be effected by the disregard of the rights of innocent states, it is justified in seeking safety at the expense of others.<sup>2</sup> But this doctrine of necessity strikes at the

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<sup>2</sup>We should remember that the preservation of a government is by no means the same thing as the preservation of a nation or state. Even when the state itself is destroyed, the people may find happiness under another flag. These considerations should help to secure a better recognition of the obligation to sacrifice the existence of the state rather than to disregard the sacred terms of a treaty. Again I quote the noble words of Westlake: "...patriotism should not allow us to forget that even our own good, and still less that of the world, does not always and imperatively require the maintenance of our state, still less its maintenance in its actual limits and with undiminished resources." (Westlake: International Law, vol. I, p. 312.)

When we speak of the existence of the state, we are always making a mere supposition, for no one really knows what will endanger the existence of the state. We should always read "interests of prime importance" when the preservation of the state is discussed.

very root of international society, and makes the preservation of the separate states of greater importance than the preservation of the community of states. Needless to say, it is not supported by the weight of authority, nor by the practice of states.

For the purpose of refuting this doctrine, Westlake (vol. I, p. 309) quotes the following extract from Rivier (*Principes du droit des gens*, vol. I, p. 277): "When," Rivier says, "a conflict arises between the right of self-preservation of a state and the duty of that state to respect the right of another, the right of self-preservation overrides the duty. *Primum vivere*. A man may be free to sacrifice himself. It is never permitted to a government to sacrifice the state of which the destinies are confided to it. The government is then authorized, and even in certain circumstances bound, to violate the right of another country for the safety (*salut*) of its own. That is the excuse of necessity, an application of the reason of state. It is a legitimate excuse."<sup>2</sup>

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<sup>2</sup>Machiavelli endorsed this doctrine of necessity as a complete justification in "The Prince" (1676, ch. xviii) where he wrote: "A prince, therefore, who is wise and prudent, cannot or ought not to keep his parole when the keeping of it is to his prejudice, and the causes for which he promised removed. Were men all good this doctrine was not to be taught, but because they are wicked and not likely to be punctual with you, you are not obliged to any such strictness with them; nor was there ever any prince that wanted lawful pretence to justify his breach of promise." (Quoted from T. J. Lawrence: *Documents Illustrative of International Law*, p. 3-4.)

On the whole, Vattel cannot be said to support the doctrine of necessity in its absolute form. (Cf. Bk. III, § 43; Bk. II, Klüber (*Europäischer Völkerrecht*, § 44) gives an emphatic endorsement of the doctrine, and gives several references in notes.

G. F. de Martens (*Précis*, §§ 74, 78) permits interference when necessary for the security of the state.

“We will here pause to remark,” writes Westlake, “that an argument which may be good as between a

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Professor Franz von Liszt, of the University of Berlin, in the year of our Lord 1920, still supports the doctrine of necessity (*Völkerrecht*, 11 ed., Berlin, 1920, p. 180-1).

At first view, we appear to find a considerable weight of modern authority defending the doctrine of absolute necessity, that is, the right of a state to do anything which it finds necessary for the preservation of its existence, even though it disregard the most sacred rights of its innocent neighbors. But on closer inspection, we find that very few really intend to support this stand. What many of these authorities have in view is the right of a state to disregard the inviolability of a sovereign state's territory when the latter fails to police it and prevent its serving as a base for hostile expeditions. The invasion of the territory in such circumstances is not a violation of sovereignty, but a coöperation with the sovereign for the policing of his territory. It is unlawful for him to resist reasonable action of this nature, and he will do so at his costs and peril. (See above §§ 1 and 15.)

This seems to be the idea at the bottom of Hall's somewhat confused statements. (Cf. *International Law*, 4 ed., §§ 11, 83, 85, 91.) On the whole, his authority is opposed to this absolute doctrine of necessity.

Phillimore stumbles in the same manner. (See vol. I, § 213, p. 227.)

Lawrence, defending action under necessity, is evidently intending to justify both preventive action by self-help, and acts of military necessity (*Principles*, 4 ed., 1910, § 65, p. 127.)

Oppenheim (*International Law*, 2 ed., vol. I, §§ 129-130, p. 184-6; § 138, p. 195; vol. II, § 413, p. 532), betrays in the confusion of his words the insecurity of his premises.

See also Twiss (vol. I, p. 149-150); Guizot (*Memoirs*, vol. IV, p. 5); Kent (*Commentaries*, 12 ed., vol. I, p. 23.)

As we have indicated, the value of the evidence which many of these text writers bring to the support of the doctrine of necessity is weakened and neutralized by the conflicting views which they express.

Those authorities who would allow every independent state to be the sole judge of when the preservation of its existence against impending danger justifies an invasion of a neighboring state may present some theoretical difference between the advocates of the extreme doctrine of necessity, but in practice, either doctrine would make possible the same disregard of

state and a government entrusted by it with its destinies is not necessarily good between it and that government together and another state; or we may put it that no state can entrust its government with wider powers than itself possesses."<sup>4</sup> (Westlake: *International Law*, vol. I, p. 310.)

the rights of innocent weaker states, and may therefore be considered as two forms of international anarchy. See discussion in section 15 regarding Castlereagh's note on the affairs of Spain; cf. also his Circular of January 19, 1821 (*British State Papers*, Vol. 8, p. 1160), in which this doctrine was expressed (quoted in Creasy, p. 293). Calvo calls these "wise principles" (*Le Droit International*, 1 ed., vol. I, § 97, p. 201.)

Evidently influenced by Castlereagh, Wheaton (*Elements of International Law*, Part II, ch. I, § 12, p. 106), referring to the sovereign's right to establish whatever form of government it chooses, declares: "No foreign state can lawfully interfere with the exercise of this right, unless such interference is authorized by some special compact, or by such a clear case of necessity as immediately affects its own independence, freedom, and security."

"Opposed to the doctrine of absolute necessity, that is, the right of a state to do anything and to disregard any right or rights when it believes it necessary for the preservation of its existence, are the following authorities:

Grotius points out that reason justifies the principle of self-preservation, but he considers we must "proceed to that which, though subsequent in origin, is of greater dignity; and must not only accept it, if it be offered, but seek it with all care." (Grotius: *De Jure Belli et Pacis*, Bk. I, ch. II, I, § 2, Whewell's translation, p. 30; cf. *Ibid*, Bk. II, ch. I, IV, § 1.) In other places where Grotius appears to justify violation of law upon the ground of necessity, he seems really to mean the right to disregard less important rights (Bk. II, ch. II, VI, § 2; Bk. II, ch. VI, V; Bk. II, ch. II, IX).

Creasy (*First Platform*, p. 282, note) quotes approvingly Acton's translation of Mamiani's "*Rights of Nations*" (p. 192): "Though it be infallibly true and certain that it is the duty of every human society to save itself, and though we be allowed also to affirm that there exists between them a tacit agreement to help and protect each other for the sake of their common safety, this must always be understood with some dis-

President Wilson, in his War Message of April 2, 1917, expressed the opinion of what the "heart and conscience of mankind demanded" when he said relative to Germany's disregard of the "meager" restrictions of international law in her ruthless submarine warfare: "This minimum of right the German Government has swept aside under the plea of retaliation and necessity and because it had no weapons which it could use at sea except these [submarines] which it is impossible to employ, as it is employing them, without throwing to the wind all scruples of humanity or of respect for the understandings that were supposed to underlie the intercourse of the world."

Germany's doctrine of necessity is contrary to international law, not because of the undoubted popular condemnation of her course throughout the world, but because the states of the world, in response to sentiments of the same nature, have in their practice refused to recognize this doctrine, and have restricted their conduct within the limits traced by international law.

From the point of view of international law as shown by the practice of states, the law of nations is supreme. No state can live by itself nor enter the community of

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cretion, and never extended beyond the limits of rectitude and justice. No sanctity, no grandeur of purpose, not even any necessity or extreme pressure of an emergency, can suffice to justify the resort to means which are not good. Let our diplomatists, both of the old school and the new, take care to remember this, that the observance of a principle is beyond measure more important than the peace, order, and safety of a single or of several States."

See also, E. C. Stowell: *Diplomacy of the War of 1914*, p. 445-456, 640-650. Ott's Edition of Klüber (§ 44, p. 307) has an important note controverting Klüber's opinion in support of the doctrine of necessity.

states without recognizing the supreme obligation of fulfilling the law of nations.<sup>5</sup>

The strength and vigor of international society is, however, derived from the strength of the separate states, and international law would be untrue to the purposes of its creation if it did not express for the guidance of states in their practice such rules as best conserve the strength of the separate states without

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<sup>5</sup>Hauterive, in his note to Vattel (Edition by Hauterive, Vol. I, p. 432-3, Bk. II, § 120) says that "necessity" is of the same nature as inadvertence and insanity in that they remove man's volition. In such cases, it is evident that much, if not all, of the deterring effect of punishment will be removed and hence there will be no rational ground for retributive punishment. Nevertheless, the law will have been disregarded, and this will justify action to restore the rights of the wronged state.

Westlake has shown the fallacy of this assertion: "When," he says, "a small injury is inflicted in obedience to an almost irresistible impulse, the law may overlook it, but in principle we may not hurt another or infringe his rights, even for our self-preservation, when he has not failed in any duty towards us."

"Self-preservation, when carried beyond this point, is a natural impulse, an effect of the laws to which human nature is subject in the stage of advancement to which it has as yet attained. But the office of jural law is not to register and consecrate the effects of the laws of nature [i. e. of human nature], but to control them by the introduction of the principle of justice, where an unreflecting submission to the tendencies which in their untamed state they promote would be destructive of society. In that way human nature itself has been gradually improved, and we may hope will continue to be so." (Westlake: International Law, Vol. I, p. 311; Cf. *ibid*, p. 307-317.)

Relative to necessity as an excuse, it may be of interest to refer to the somewhat confused reasoning of certain writers: H. V. Rotteck (*Einmischungsrecht*, p. 20-25); Oppenheim (vol. II, p. 53); Lawrence (*Principles*, 4 ed., 1910, § 65). Rotteck says action on account of necessity does not become lawful, but is excused.

destroying the supremacy and practicability of international law.\*

When from the practice of states we seek to discover how this happy result has been achieved, we turn first for assistance to the observation of the most trustworthy authorities. But since this doctrine of necessity is a matter which has led many of the writers astray, we cannot rely upon their conflicting statements and must needs base our conclusions at first hand upon the evident facts and the practice of states, and test them by showing that they are in conformity with the fundamental principles of international law.

We have previously established (see above § 9) that the rights of each state, as they are ordinarily understood and exercised, may be curtailed or even entirely denied when necessary for the common peace and security of the society of nations.

Now when we see that the strength and prosperity of all the states is dependent upon the preservation of the prosperity of the separate members, the same principle of international police would appear to justify a reasonable curtailment of the rights of any state in order to preserve the existence of one of the other member states.

In principle and reasoning *a priori*, this rule is sound, and in practice we find that it is acted upon.'

Every state that is mindful of the obligations of mutual helpfulness and coöperation would not refuse to permit a reasonable disregard of its minor rights when necessary for the preservation of the existence of a sis-

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\*The rules of international law are in the main derived from, or indicated by, the concurrent practice of states, and like all inductive generalizations, can be only approximately accurate. But when once a rule has been formulated, it receives for that reason a greater respect, and tends to make the practice of states conform to the terms in which it has been stated.

'See above § 9.

ter state.\* Conduct other than this would constitute an abuse of right, since it would be an unreasonable insistence upon the right in question to the detriment of that for the preservation of which the right was primarily intended.

Stated from the point of view of the intervening state, international law, in denying the right of a state to destroy another even when necessary for its own preservation, does not deny that every state may, when necessary for the preservation of its existence, disregard less important rights of other states. This is the true doctrine of necessity.

Every state is required by international law to refrain from every abusive use of its sovereignty and independence in order that the rights of every other state to the maintenance of its independent existence may not be imperiled. The purpose of the observance of this rule is to preserve unimpaired the strength of international society, which is itself derived from the strength of the separate states and their continued independence existence.\*

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\*See also below § 22. Disraeli well understood this as is shown by the following remark which he made: "If the government of the world was a mere alternation between abstract right and overwhelming force, I agree there is a good deal in that observation; but that is not the way in which the world is governed. The world is governed by conciliation, compromise, influence, varied interests, the recognition of the rights of others, coupled with the assertion of one's own; and in addition, a general conviction, resulting from explanation and good understanding, that it is for the interest of all parties that matters should be conducted in a satisfactory and peaceful manner." (G. E. Buckle: *Life of Disraeli*, Vol. V, p. 460-461.)

\*Some writers condemn the attempt to establish a hierarchy of rights, but this is to misunderstand the real significance of this doctrine of necessity. There would be no hierarchy of rights if such right were accurately and completely formu-



↓ From this examination, we perceive that a state is justified when necessary for the preservation of its existence and the rights essential thereto, in disregarding rights of another state which are not essential to the existence of the latter. Expressed from the point of view of the obligation of the state whose rights are disregarded, this is the rule of mutual self-sacrifice reasonably incumbent upon all the nations in the interest of their common welfare, or, more briefly, this may be called the principle of the relativity of rights and it is a rule the observance of which is essential to prevent intolerable abuses of right.

The same idea is expressed in the maxim: *summum jus summa injuria*, which may be freely translated: the insistence upon the literal and absolute fulfilment of one's legal right works supreme injustice. Grotius advises that concessions be made in order to avoid war, and quotes Ambrose as saying: "...for a good man to relax somewhat of his rights, is not only a point of liberality, but often of convenience." (Grotius, Bk. II, ch. XXIV, II, §§ 3-4, Whewells's translation, vol. II, p. 415-6.) Elsewhere Grotius makes application of the same idea when he recognizes the right of taking property in case of necessity, but adds: "...such liberty is not granted, if the possessor be in like necessity." (Grotius, Bk. II, ch. II, VIII, Whewells's translation, vol. I, p. 240.)

Ferdinando Galiani has recognized this rule, and stated it as "the combination of the greatest benefit to

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lated, but since, in view of our lack of juridical experience and science, this is not yet possible, every right as formulated must be understood to be subject to certain fundamental or guiding principles, as Westlake has said in a passage already quoted: "...No principle is more firmly established in the science of law than that which says to an owner *sic utere tuo ut alienum non laedas*." [So use thine own as not to injure another.] (Westlake: International Law, vol. II, p. 313.)

oneself with the least damage to others and reciprocally the least damage to oneself, combined with the greatest benefit of others." (De Doveri, Naples, 1782, p. 20-22, translated from the French, quoted in a note to Pradier-Fodéré's Vattel, Paris, 1863, vol. II, p. 104, Bk. II, ch. V, § 119.)<sup>10</sup>

Westlake (vol. I, p. 312-313) alludes to this same principle negatively when he justifies anticipatory action to prevent "all violation of the legal rights;" but he denies that recourse to force may be had for this purpose in the case of "trifling injuries," and he adds: "de minimis non curat lex"—or, the law does not take account of trifles.<sup>11</sup>

The right of angary is an application of the same principle of the relativity of rights, and it justifies the seizure of innocent neutral property in time of war,

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<sup>10</sup>In the same note, Pradier Fodéré quotes Jouffroy (Catéchisme de Droit Naturel, 1841, § 107, p. 41) as declaring: "When in a case of urgent necessity a person violates the rights of another in the belief that there is no other means to save his innate rights, he does not do wrong provided that he is justified in believing (*peut présumer*) that the other to protect those rights would spontaneously have done the same. That is to say, 1st, when to defend one of the rights essential to the preservation of a man's dignity, he violates a right of another less essential to humanity; 2nd, when he is able to make the reparation which he owes."

<sup>11</sup>Speaking of intervention to ward off imminent danger, Lawrence (Principles, 4 ed., § 65, p. 127-8) says: "It must be sufficiently important in itself to justify the expenditure of blood and treasure to repel it. . . . Governments constantly submit to small inconveniences rather than resort to hostilities."

Perhaps it is fair to say that the criticism, whether well founded or not, that fell upon Lord Palmerston because of his interposition in the Don Pacifico affair was based upon the ground of the relative insignificance of the claims which Palmerston sent a fleet to collect from Greece. (See Hogan: Pacific Blockade, p. 105-115, for an account of the facts of this intervention.)

and the seizure of any property generally when necessary for the preservation of the state. The right of undisturbed possession yields to the superior need in as far as is necessary to meet it. But the extremity of the appropriating state does not stand in the way of the payment of adequate compensation<sup>12</sup> and even of restitution when the need is past.

A very wide recognition of the principle of the relativity of rights is shown by the authorities who justify the disregard of the territorial inviolability of a neighboring state when necessary for self-preservation and in order to ward off an imminent peril. Even though the real justification for this irruption into neighboring territory is, as we have seen, based upon another and quite distinct principle,<sup>13</sup> these opinions bear testimony

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<sup>12</sup>Cf. Twiss, vol. I, p. 149; Grotius, Bk. II, ch. II, VIII; Stowell and Munro: *International Cases*, Vol. II, p. 544-557. When possible, the same principle would require payment prior to ex-appropriation. An interesting case of angary was the seizure of the Dutch vessels in the ports of the United States during the recent war. (See J. W. Garner: *International Law and the World War*, vol. I, p. 174-6.)

Grotius (Bk. II, ch. II, VII, VIII, IX, Whewell's translation, vol. I, p. 239-240) justifying certain alleged "pristine rights" of all mankind and declaring that they are revived by necessity, warns that "this liberty go not too far." First, he cautions us to endeavor to avoid using it, and by way of illustration he adds: "Plato allows a man to take water from his neighbor's well, if in his own he has dug down to the chalk, seeking water; and Solon, if he has dug his own ground forty cubits. For as Plutarch says, he thought that necessity was to be relieved, not idleness encouraged; and Xenophon says to the Sinopians, If we are not allowed to buy, we must take; not from contempt of Rights, but from necessity."

"Secondly, such liberty is not granted, if the possessor be in like necessity;.... Lactantius says, that he does not do amiss who abstains to thrust a drowning man from a plank, or a wounded man from his horse, even for the sake of his own preservation. So Cicero; and Curtius.

"Thirdly, that when it is possible, restitution be made."

<sup>13</sup>That is, self-help. See above, §§ 1 and 15.

to the recognition of the existence and vitality of the principle of relativity.<sup>14</sup>

It is certainly a defect in the practical application of this principle that to each state is left the liberty of deciding in first instance whether its own rights are, relatively to the rights of others, of such an importance as to justify recourse to force to preserve them.<sup>15</sup>

We must, however, remember that this is the system of sovereignty, and as we have explained, the only one which is practical under present conditions. "The conscientious judgment of the state," says Westlake, "acting on the right thus allowed must necessarily stand in the place of authoritative sanction, so long as the present imperfect organization of the world continues." (Westlake, vol. I, p. 313.)

The decision which the state thus makes in its own case is not conclusive, and if arbitrary and evidently unreasonable—that is in contradiction to the law—the

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<sup>14</sup>Some of the authorities who express this view are Twiss (vol. I, § 102, p. 149), Phillimore (Commentaries, 1 ed., vol. I, § 213, p. 227), and Lawrence (Principles, 4 ed., § 65, p. 127.)

Halleck (International Law, ch. IV, § 25, p. 95), criticising Phillimore's view, points out the contradiction in his reasoning, but does not appear himself to seize the principle of relativity for which Phillimore is groping.

We find what is really another recognition of the principle of relativity, although it is also based upon an erroneous interpretation of principle: I refer to the alleged right of transit, or passage for troops across neutral territory. (See Vattel, Bk. II, ch. IX, § 123. Pradier-Fodéré's edition supplies interesting notes to this passage and to the following sections relating to the right of "innocent passage" vol. II, p. 108-116.)

<sup>15</sup>The failure to distinguish between a liberty of each state to make this decision subject to such rectification as the procedure of international law provides and an absolute or perfect right to decide as it chooses has caused much confusion. We shall revert to this matter later on.

other states will either counter-intervene or make the transgressor feel the weight of their disapproval.<sup>16</sup>

✓ We have seen that, according to international law, the plea of self-preservation or necessity is not an adequate justification for the overriding of rights of another state in order to survive. The plea of self-preservation only permits such recourse to force as is necessary to compel other states to fulfil their obligations of mutual helpfulness and coöperation. We must now discuss one or two situations of peculiar difficulty which arise in practice.

MILITARY NECESSITY may be defined as the right of a belligerent to disregard certain rules of the law of war when justified by a legitimate military purpose. For instance, the obligation to respect the rights of property, whether in occupied territory or elsewhere, gives way to such need as the military authorities may have to effect the purpose of their operations, but military necessity does not justify a violation of the rules of honorable warfare, however extreme the need. The hope of salvation for the state defending its existence cannot justify, upon the plea of necessity, any departure from the fundamental laws which have been learned by experience, and adopted by all the states as essential to prevent war from degenerating into an indiscriminate slaughter, like the contests of beasts. There is no doubt a certain latitude, but this is a question which is more properly considered under the laws

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<sup>16</sup>The limitation which some authorities put upon justifiable action for self-preservation is really a question of the reasonableness of satisfaction. (Cf. Halleck, ch. IV, § 5, p. 84.)

Whenever international law gives a right of action for redress, the right is limited to what is reasonably required for satisfaction, compensation, and security.

of war and the limits of military reprisals.<sup>17</sup> The doctrine of military necessity from the point of view of neutrality is of particular interest. In how far may the state acting for self-preservation go in disregarding neutral rights?

#### MILITARY NECESSITY AND NEUTRAL RIGHTS

Military necessity in relation to neutral rights is probably the most intricate of all the questions which we shall have to discuss, and it has not as far as I am aware been satisfactorily treated by any of the writers upon the law of nations. To understand the application of the principles, it is first necessary to understand the nature of neutrality. We have already seen that every state is obligated to do what it is reasonably able to help to enforce international law, and to repel aggression against its sister states. Now since the imperfect system of international law leaves to each state the exercise of its discretion as to where and how it should act, it may well happen that an injustice be done the innocent party in strife through a failure of other states to be reasonably active in the discharge of their obligation to coöperate for the enforcement of justice. When such a miscarriage of justice occurs, the injured state will have just cause of complaint against neutral

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<sup>17</sup>The laws of war carry with them their own sanction, and the belligerent who violates them will be in danger of degrading the conflict to a war of extermination which may work the destruction of both parties, but will tend surely to eliminate the transgressor from the ranks of respectable states. The states that survive today are those that have shown a proper regard for the laws of war, or at least, to state a truism, we may say that they have shown a respect for the laws of war adequate to permit their survival.

In addition to this automatic sanction of common ruin, there is also the possibility of intervention by neutral states. (See above, § 7.)

states, and since states have ever been prone to regard their own cause as just, they have generally been ready to penalize neutral states who fail to intervene in support of what the belligerent considers justice, i. e., his own cause. In this atmosphere has grown *de facto* a right of neutrality for those states only that were sufficiently strong to insist upon enjoying that status. As an obligation corresponding to this right of neutrality, the neutral state was bound to enforce upon both belligerents alike the respect of its neutrality. The point to note clearly is that the right of a state too weak to make its neutrality respected by all the belligerents can be based only upon the sanction of other states coöperating to make it respected. In the absence of such a collective sanction, a belligerent who fears that his adversary will take advantage of the weakness of a neutral state will not dare to wait until by the violation of the neutral territory the war has been won. In this situation, the belligerent who has ground for apprehension will anticipate and offer the neutral too weak to defend his neutrality the choice of being with him or against him.

It is reasonable to believe that the bitter lesson taught by the recent war will make powerful neutrals quicker to intervene for justice in future wars, in which event a small power in a precarious position may be allowed to remain neutral even when unable to defend its neutrality against an unscrupulous belligerent.

Let us hope that the time has come when a weak neutral can rely on the support of other states. In any event, we may expect to find in practice a better respect of neutral rights on the part of belligerents.

But even now and until the advance is reasonably certain, there is some justification for belligerents proceeding as far in the disregard of neutral rights as neutrals and other states will tolerate, provided always

that such disregard does not amount to an act of bad faith or inhumanity, which is contrary to the fundamental and always controlling precepts of international law.

Grotius took this view as the following extract shows:

"Hence we may collect how he who carries on a righteous war may lawfully seize a place situate in a land which is not at war; namely, if there be a danger, not imaginary, but certain, that the enemy will seize that place, and thence do irreparable damage: and next, on condition that nothing be taken which is not necessary for this purpose of caution, for example, the mere custody of the place, leaving to the true owner the jurisdiction and the revenues: finally, if it be done with the intention of restoring the custody to the true owner as soon as the necessity is over." (Grotius: *De Jure et Pacis*, Bk. II, ch. II, X, Whewells's translation, vol. I, p. 240-241.)

Vattel, with a reckless disregard of consistency with his previously expressed opinion (see Bk. III, § 43) declares: "Imperative necessity may also warrant a belligerent in seizing temporarily a neutral town and placing a garrison there, for the purpose either of protecting himself against the enemy or of anticipating the designs of the enemy upon the same town, when the sovereign is unable to defend it." (Vattel: *The Law of Nations*, Bk. III, ch. VII, § 122, Carnegie translation, p. 275.)

Hall discusses this situation somewhat fully: "The right of self-preservation in some cases justifies the commission of acts of violence against a friendly or neutral state, when from its position and resources it is capable of being made use of to dangerous effect by an enemy, when there is a known intention on his part so to make use of it, and when, if he is not forestalled,



it is almost certain that he will succeed, either through the helplessness of the country or by means of intrigues with a party within it. The case, though closely analogous to that already mentioned, so far differs from it that action, instead of being directed against persons whose behavior it may be presumed is not sanctioned by the state, is necessarily directed against the state itself. The state must be rendered harmless by its territory being militarily occupied, or by the surrender of its armaments being extorted. Although therefore the measures employed may be consistent with amity of feeling, it is impossible to expect, as in the former case, that a country shall consider it more important that the threatened state shall be protected than that its own rights of sovereignty shall be maintained intact, and while the one state may do what is necessary for its own preservation, the other may resent its action, and may treat it as an enemy. So long however as this does not occur, and war in consequence does not break out, the former professes that its operations are of a friendly nature; it is therefore strictly limited to such action as is barely necessary for its object, and it is evidently bound to make compensation for any injury done by it.<sup>18</sup>

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<sup>18</sup>Hall adds the following note: "Grotius (*De Jure Belli et Pacis*, lib. ii. c.ii, § 10) gives the occupation of neutral territory, under such circumstances as those stated, as an illustration of the acts permissible under his law of necessity; and the doctrine of Wolff (*Jus Gentium*, § 339), Lampredi (*Jr. Pub. Univ. Theorem.* pt. iii. cap. vii. § 4), Klüber (§ 44), Twiss (i. § 102), etc., covers the view expressed in the text; its best justification, however, is that the violation of the rights of sovereignty contemplated by it is not more serious, and is caused by far graver reasons, than can be alleged in support of many grounds of defensive intervention, which have been acted upon, and have been commonly accepted by writers. For defensive intervention, see § 91." [The passage from Grotius above referred to is that which we have just quoted. E. C. S.]

“The most remarkable instance of action of the kind in question is that which is presented by the English operations with respect to Denmark in 1807. At that time the Danes were in possession of a considerable fleet, and of vast quantities of material of naval construction and equipment; they had no army capable of sustaining an attack from the French forces then massed in the north of Germany; it was provided by secret articles in the Treaty of Tilsit, of which the British government was cognizant, that France should be at liberty to take possession of the Danish fleet and to use it against England;” if possession had been taken, France ‘would have been placed in a commanding position for the attack of the vulnerable parts of Ireland, and for a descent upon the coasts of England and Scotland;’ in opposition, no competent defensive force could have been assigned without weakening the Mediterranean, Atlantic, and Indian stations to a degree dangerous to the national possessions in those regions; the French forces were within easy striking distance, and the English government had every reason to expect that the secret articles of the Treaty of Tilsit would be acted upon. Orders were in fact issued for the entry of the corps of Bernadotte and Davoust into Denmark before Napoleon became aware of the dispatch, or even the intended dispatch, of an English expedition. In these circumstances the British government made a demand, the presentation of which was supported by a considerable naval and military force, that the Danish fleet should be delivered into the custody of England; but the means of defense against French invasion and a guarantee of the whole Danish

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<sup>19</sup>Hall is in error here. The British Government may have had information which led them to expect that the treaty would be made, but the British Expedition was decided upon before the treaty was signed.

possessions were at the same time offered, and it was explained that 'we ask deposit—we have not looked for capture; so far from it, the most solemn pledge has been offered to your government, and it is hereby renewed, that, if our demand be acceded to, every ship of the navy of Denmark shall, at the conclusion of a general peace, be restored to her in the same condition and state of equipment as when received under the protection of the British flag.' The emergency was one which gave good reason for the general line of conduct of the English government. The specific demands of the latter were also kept within due limits. Unfortunately Denmark, in the exercise of an indubitable right, chose to look upon its action as hostile, and war ensued, the occurrence of which is a proper subject for extreme regret, but offers no justification for the harsh judgments which have been frequently passed upon the measures which led to it."<sup>20</sup> (Hall: *International Law*, 4th ed., 1895, § 85, p. 284-7.)

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<sup>20</sup>Hall adds the following in a note: "Alison, *Hist. of Europe*, VI: 474-5; De Garden, *Hist. des Traités de Paix*, X: 238-243 and 325-331. Writers who still amuse themselves by repeating the attacks upon the conduct of England, which were formerly common, might read with profit the account of the transaction given by the best French historian who has dealt with the Napoleonic period (Lanfrey: *Hist. de Napoléon Ier*, IV: 146-9), [and Professor T. E. Holland's addition to Hall's note] and the comments on the English policy by Captain Mahan of the U. S. Navy, 'Influence of Sea Power upon the French Revolution and Empire,' II: 277."

Nassau Senior, a loyal Englishman of the highest standing, remarks: "Such was the pretence on which we seized Copenhagen in 1807; but who will now venture to defend that occupation?" (Nassau Senior: Article in *Edinburgh Review*, April, 1843, vol. 156, p. 328.)

Travers Twiss is in agreement with Hall. He writes: "Urgent and indisputable danger may even authorize a nation, to occupy the territory of a neutral nation in order to prevent the execution of an enemy's intention to occupy it for the

Hall has not included what was perhaps the most significant incident connected with these events. The

purposes of carrying on its hostilities with greater advantage, whenever the nation to which the territory belongs is unable or unwilling to defend it. But the exercise of this right, which Klüber (Pt. II, § 44) regards as a right of necessity, entails the obligation to make compensation to the neutral state for any damages which may have accrued to it." (Travers Twiss: *The Law of Nations*, vol. I, 1861, § 102, p. 150.)

And Westlake who has given us the best refutation of the so-called doctrine of necessity, avoids Hall's misstatement of facts but reaches the same conclusion: "Perhaps the most memorable instance of political action on the ground of self-preservation, justifiable in our opinion, is that of the seizure of the Danish fleet by England in 1807. After the treaty of Tilsit there was good reason for believing that Napoleon and the czar Alexander, in order to obtain a great increase of naval power against England, intended to compel Denmark, by force if necessary, to join them in the war. The British government demanded of Denmark the surrender of her fleet, offering the most solemn pledge that on the conclusion of a general peace it should be restored in the same condition and state of equipment as when received. And on meeting with a refusal it caused the fleet to be captured by force of arms. Such a case is essentially similar to that of a belligerent having sure information that his enemy, in order to obtain a strategic advantage, is about to march an army across the territory of a neutral clearly too weak to resist, in which circumstances it would be impossible to deny him the right of anticipating the blow on the neutral territory. The principle that the legal rights of a state are not to be violated without its own fault is not really infringed, for when a state is unable of itself to prevent a hostile use being made of its territory or its resources, it ought to allow proper measures of self-protection to be taken by the state against which the hostile use is impending, or else must be deemed to intend that use as the necessary consequence of refusing the permission. It is a principle of jurisprudence that every one is presumed to intend the necessary consequences of his actions. We cannot therefore subscribe to the condemnation which many continental writers have pronounced on the conduct of England in 1807." (Westlake: *International Law*, Vol. I, p. 315-316.)

British plenipotentiary, desirous of limiting the harshness of the measures so as not to humiliate the Danes unnecessarily, had agreed to withdraw the British forces from the captured island of Zealand within a short period. But in view of the hostility of Denmark, which was naturally to be expected, the retention of this position became a matter of the greatest military importance. Nevertheless, the British Government honorably carried out the unfortunate terms of their plenipotentiary, which they might, with some justification, have regarded as a sponsion. Evidently in their minds the faithful observance of a treaty took precedence over military necessity even in a case of such urgency as the one under consideration.<sup>21</sup>

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The principle which Westlake formulates is correct, but we may question its application in the present instance. For why should Denmark be held responsible for the evil consequences to others which might be expected to result from the commission of an assault upon her own rights? Before Westlake's principle can apply, it must be shown that Denmark was herself a secretly active or negligently complaisant party to Napoleon's designs. England's defense must rest on other grounds which are discussed in the text.

Lawrence remarks: "In all probability men will differ as long as International Law is studied, about the seizure of the Danish fleet by Great Britain in 1807." (T. J. Lawrence: *The Principles of International Law*, 4 ed., § 65, p. 127-8.)

<sup>21</sup>September 22, 1807, Lord Castlereagh wrote Lord Cathcart, "We are, above all things, anxious to preserve our character for good faith untainted, but..." and he went on to explain the desirability of reoccupying Zealand as soon as it might honorably be done. (Castlereagh's *Correspondence, Dispatches, and Other Papers*, ed. by C. W. Vane, Marquis of Londonderry, 2nd Series, London, 1851, vol. VI, p. 179-181, 184.)

Mr. Ponsonby twitted the government for withdrawing from Zealand. "Why," he asked, "so shabby in our iniquities? When we imitated the atrocities of the ruler of France, why not imitate the grandeur and magnificence of his designs!" (Parliamentary Debates, vol. X, p. 265.) Canning defended the conduct of the Government (*ibid*, p. 278), but in a letter

The case of Copenhagen has often been referred to by German sympathizers as exactly comparable with that of Belgium, but the two cases obviously are not based upon the same principles. Firstly, in the case of the invasion of Belgium, Germany's own uncompromising—we might say aggressive—conduct made war inevitable and created the necessity, if such there was. Secondly, it would appear that the war might have been fought without invading Belgium, and hindsight has shown how much wiser were those of the Kaiser's advisers who urged another plan. But after all, these two reasons are of lesser moment than those which follow. Thirdly, Germany had solemnly pledged her word to defend the neutrality of Belgium, whereas, instead of keeping faith, she treacherously invaded the territory of an innocent nation. Fourthly, Germany unworthily attempted, by bearing false witness, to make her own people and neutral nations believe that the invasion was justified by prior violations of Belgian territory, into which, Germany declared, French troops had penetrated. Thus, Germany herself violated a treaty into which she had entered with a full knowledge of all the circumstances and from which she had for many years derived advantage.

In honorable contrast with this conduct, England may be justly proud of the scrupulousness with which in 1807 her Government refused to make necessity a ground for repudiation of the agreement into which they entered, we might say unwittingly. It would not necessarily follow that the precedents of a hundred

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of September 23, 1807, to Mr. Ross, his private secretary, he complained of the agents who had made the agreement. (Letters of the First Earl of Malmesbury, London, 1870, vol. II, p. 51. Cf. Diaries and Letters of Sir George Jackson, 1872, vol. II, p. 218, Rose Canning and Denmark, in *English Historical Review*, 1896, p. 90.)

years ago should be made the models of to-day, but in a situation similar to that which faced England in 1807, when the autocracies of France and Russia combined to compass her ruin, I believe that any intelligent government would disregard the neutrality of a power too weak to prevent itself from becoming an involuntary instrument for the carrying out of the enemy's designs.

If a high-minded and intelligent government would follow the precedent of 1807, we should praise and not blame England for it. But it is to be hoped that a nearer sense of the obligation which rests upon all of the states to defend the independence of any one of them from attack will henceforth render such an act of prevention at one and the same time unnecessary and inexpedient.

#### § 17. BALANCE OF POWER

Among independent states, the maintenance of the political equilibrium is a matter of constant attention. It is almost as instinctive for the statesman incessantly to make the countless little moves which are necessary for the purpose as it is for an individual to call into play the different muscles which maintain his balance and keep him erect.<sup>22</sup>

Since every state that is not increasing its relative influence in international affairs is anxious at least to preserve existing advantages, it is natural that this

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<sup>22</sup>Polybius, *Let. I, Cap. 83*, cited by W. A. Phillips in his article on the Balance of Power, *Encyclopedia Britannica*, vol. III, p. 235, writes: "Nor is such a principle to be despised, nor should so great a power be allowed to any one as to make it impossible for you afterwards to dispute with him on equal terms considering your manifest rights."

In the article just referred to, Phillips says: "In its essence, it is no more than a precept of common sense born of experience and the instinct of self-preservation."

similarity of purpose should constitute a basis for coöperative action. The supporters of the policy of conservation would preserve the political equilibrium of states by the maintenance of existing relations,—that is, they defend the *status quo*. The weaker states that fear to be swallowed up by the great states are generally of this persuasion, and sometimes this group will be found to include a great state possessed of greater territory than it can expect to defend by its unaided force against the encroachments and cupidity of its rivals.

A different method is advocated by a second group composed of states of great power and insatiable land hunger who wish to acquire new territories without the danger and expense of war. They would apportion among themselves the territory of any state upon which they have cast their covetous eyes. The best instance of the application of this method of maintaining the political equilibrium was the partition of Poland at the end of the eighteenth century. But this doctrine of partition in order to maintain the balance of power is nothing but another name for conquest. It can make no claim to the recognition of international law, since its purpose is to build up the territories of the great powers through the spoliation of their weak and unoffending neighbors. In practice the partition of the coveted territories does not meet the basic test of law. It is not generally effective in maintaining peace. On the contrary, it sows the seeds of greater discord.<sup>23</sup>

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<sup>23</sup>In the event that a small state is unable to fulfil its international obligations, so that its territory becomes a cause of disturbance for neighboring powers and an international nuisance, the surrounding powers would be justified in taking such reasonable action as is necessary to police the territory and to remove the cause of disturbance. See above § 9, and under § 15.



The brazen doctrine of partition has had an interesting history of its own. The first crude method of equal division was improved upon so as to permit the carving up of the seized territory in such a manner as to preserve the proportionate strength of the partitioning powers.<sup>24</sup>

As evidence of the prevalence of this doctrine, we may quote from so liberal a thinker as Sir Robert Morier, who was in general no admirer of Napoleon III. He writes his father from Vienna, June 20, 1866: "That, if there should result from this war [Austro-Prussian] great territorial changes such as to alter very gravely the relative strength of the military monarchies of Europe, France should expect some corresponding advantages, is so absurdly fair that it is inconceivable to me that even that dullest of corniferi, John Bull, should shake his foolish head at it."<sup>25</sup> (*Memoirs and Letters of Sir Robert Morier*, vol. II, p. 67.)

In this connection, and in view of subsequent events, it is interesting to read what Lord Palmerston wrote Lord Clarendon, March 1, 1857: "As to the Emperor's schemes about Africa, the sooner Cowley sends in his grounds of objection the better. It is very possible that many parts of the world would be better governed by France, England, and Sardinia than they are now; and we need not go beyond Italy, Sicily, and Spain for examples. But the alliance of England and France had derived its strength not merely from the military and naval power of the two states, but from the force of the

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<sup>24</sup>See Charles Dupuis: *Le principe de l'équilibre*, p. 41.

<sup>25</sup>The project of a partition of Belgium in the handwriting of Benadetti was given out by Bismarck and published in the *London Times* upon the outbreak of the Franco-German War. It did much to alienate the sympathy of England and to lessen her desire of intervention. (See *International Relations* by the correspondent of "The Times" [Blowitz] at Berlin, Vol. II, p. 190f.)

moral principle upon which that union has been founded. Our union has for its foundation resistance to unjust aggression, the defense of the weak against the strong, and the maintenance of the existing balance of power. How, then, could we combine to become unprovoked aggressors, to imitate, in Africa, the partition of Poland by the conquest of Morocco for France, of Tunis and some other state for Sardinia, and of Egypt for England? and, more especially, how could England and France, who have guaranteed the integrity of the Turkish Empire, turn round and wrest Egypt from the Sultan? A coalition for such a purpose would revolt the moral feelings of mankind, and would certainly be fatal to any English Government that was a party to it. Then, as to the balance of power to be maintained by giving us Egypt. In the first place, we don't want to have Egypt. What we wish about Egypt is that it should continue attached to the Turkish empire, which is a security against its belonging to any European power. We want to trade with Egypt, and to travel through Egypt, but we do not want the burthen of governing Egypt, and its possession would not, as a political, military, and naval question, be considered, in this country, as a set-off against the possession of Morocco by France. Let us try to improve all these countries by the general influence of our commerce, but let us all abstain from a crusade of conquest which would call down upon us the condemnation of all the other civilized nations.

“This conquest of Morocco was the secret aim of Louis Philippe, and is one of the plans deposited for use, as occasion may offer, in the archives of the French Government.” (Ashley: Life of Palmerston, vol. II, p. 125-6.)

The tenet of the first school—that which defends the rigid maintenance of the *status quo*—may not appear

so abhorrent, but it has no greater justification in international law than the doctrine of conquest, called partition. The latter in any event does allow the states of exuberant strength to acquire new territories, while the former would put the world in a strait-jacket.<sup>26</sup> We must therefore relegate these two time-honored doctrines to the sphere of politics of which they are an interesting, if not happy, expression. Unfortunately, many of the writers upon international law have failed to perceive this, and have been led into a regrettable confusion. They have done much to obscure the understanding of the balance of power.<sup>27</sup>

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<sup>26</sup>We must remember that the maintenance of the body of independent states is justified as an instrument of human peace and progress, but it would be the height of intellectual arrogance to assume that any existing relationship was the end of human achievement. It is impossible to arrest the march of progress by any combination to maintain the *status quo*. Hence it would be as ineffectual as immoral to attempt to enforce any rule which should forbid to the independent states of the world a gradual growth and evolution toward more perfect forms. Lorimer (Institutes of the Law of Nations, 1884, vol. II, p. 197-208) points out that the doctrine of the balance of power was set up by the states in order to maintain the *status quo*, and from this point of view he levels at it a searching and destructive criticism which everyone should read. But Lorimer and other writers, with the possible exception of Nassau Senior, seem not to have observed that the recognition of the doctrine of the balance of power by the states and the enforcement of it in practice have had other legitimate and valuable results which we note further along.

<sup>27</sup>In regard to the attempt to justify the partition treaties of 1698 and 1700 for the partition of the Spanish succession, Creasy refers to what Lord Macaulay has written, and remarks: "A zealot for William III will probably think that defense successful. To others it may appear that the direct gross injury of violently dismembering an unoffending state against its will, far outweighs any speculative good that can be effected by preventing a possible disarrangement of the political equilibrium of Europe." (First Platform of International Law, p. 287.)

Other writers have added to the confusion of the discussion by classing under the balance of power

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But I cannot share Sir Edward Creasy's high opinion of Macaulay's argument, and I think an examination will bear me out.

Lord Macaulay's justification of the partition treaty is as follows:

"It has been said to have been unjust that three states should have combined to divide a fourth state without its own consent; and, in recent times, the partition of the Spanish monarchy which was meditated in 1698 has been compared to the greatest political crime which stains the history of modern Europe, the partition of Poland. But those who hold such language cannot have well considered the nature of the Spanish monarchy in the seventeenth century. That monarchy was not a body pervaded by one principle of vitality and sensation. It was an assemblage of distinct bodies, none of which had any strong sympathy with the rest, and some of which had a positive antipathy for each other. The partition planned at Loo was therefore the very opposite of the partition of Poland. The partition of Poland was the partition of a nation. It was such a partition as is effected by hacking a living man limb from limb. The partition planned at Loo was the partition of an ill-governed empire which was not a nation. It was such a partition as is effected by setting loose a drove of slaves who have been fastened together with collars and handcuffs, and whose union has produced only pain, inconvenience and mutual disgust. There is not the slightest reason to believe that the Neapolitans would have preferred the Catholic King to the Dauphin, or that the Lombards would have preferred the Catholic King to the Arch-duke. How little the Guipuscoans would have disliked separation from Spain and annexation to France we may judge from the fact that, a few years later the States of Guipuscoa actually offered to transfer their allegiance to France on condition that their peculiar franchises should be held sacred.

"One wound the partition would undoubtedly have inflicted, a wound on the Castilian pride. But surely the pride which a nation takes in exercising over other nations a blighting and withering dominion, a dominion without prudence or energy, without justice or mercy, is not a feeling entitled to much respect. And even a Castilian who was not greatly deficient in sagacity must have seen that an inheritance claimed

counter-intervention by third states to prevent a state which has vanquished its rival from disturbing the

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by two of the greatest potentates in Europe could hardly pass entire to one claimant; that a partition was therefore all but inevitable; and that the question was in truth merely between a partition effected by friendly compromise and a partition effected by means of a long and devastating war.

“There seems, therefore, to be no ground at all for pronouncing the terms of the Treaty of Loo unjust to the Emperor, to the Spanish monarchy considered as a whole, or to any part of that monarchy.” (The History of England from the Accession of James II by Thomas Babington Macaulay, Chapt. XXIV, p. 363-4.)

Answering the charge that the partition of the Spanish Monarchy, contemplated by the Treaty of Loo, 1698, was to be compared with the partition of Poland, which he characterizes as “the greatest political crime which stains the history of modern Europe,” Macaulay defends the conduct of the governments concerned on the ground that there was no sentiment of national unity between the different parts, and that it was an advantage to certain regions to free them from the Spanish yoke. He considers that the only hurt was to Spanish national pride, but this he did not consider was sufficient cause to restrain the action of the powers.

But Macaulay does not appear sufficiently to have taken into account the national rights of the Spanish people. The greatness of Spain was in part due to the energy and sacrifices of the Spanish people, and in part to the fortunate inheritance of their sovereigns of foreign territory. As a matter of right, it is not clear that the political aims of England and Holland were a sufficient justification for the partition. There was, however, a just ground for preventing Louis XIV from effecting a combination between the two states by placing a scion of his house on the Spanish throne.

It is probably true, as Macaulay declares, that had the Spanish King died that year, the Treaty of Loo would have been observed by Louis XIV, and have preserved the peace of Europe. The certainty of avoiding a great European war might, as a matter of expediency, seem to permit the powers to disregard Spanish national pride and the sovereign rights of Spain. But it is not certain that peace could not have been preserved by some other means, and it is by no means certain that France would have accepted the treaty. Subsequent events showed that this serious interference with Spanish

political equilibrium by an unjust annexation of territory. Any and all of the states are of course justified and obligated to do what is reasonably possible in preventing the conqueror from exacting an unreasonable satisfaction, such as an excessive annexation of territory. In those instances when other states have been apprehensive that the excessive annexation would disturb the political equilibrium, they have naturally been especially active in preventing it. But such interventions from a legal viewpoint were no more than ordinary instances of counter-intervention for the vindication of the law and the prevention of conquest. Ignoring this, statesmen and many of the text-writers have regarded this action entirely from the point of view of the political motive which inspired it. They have therefore classified it by its political motive as an instance of action to maintain the balance of power instead of by its juridical purpose as counter-intervention.<sup>28</sup>

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rights which the allied powers agreed to upon the supposition that the king was moribund was unavailing. It did not prevent the war. It may not be unreasonable to suggest that the result of the partition treaty was to embitter the strife and cause a prolongation of the disastrous conflict. Louis XIV may have found some justification for his repudiation of a treaty which contemplated an illegal act, especially when he had been constrained to give his consent to it. Thus it is evident the vices in the original treaty bore bitter fruit.

A recent and striking instance of partition on the ground of the maintenance of the balance of power was Great Britain's acquisition of Wei-Hai-Wei to balance Russia's occupation of Port Arthur. (See Robin: Occupations, p. 524-5.)

<sup>28</sup>Strauch recognizes the right of intervention for the preservation of the balance of power when it is endangered by the acquisition of territory as the result of war. (Interventionslehre, p. 11; see also Vattel, Bk. III, § 49.)

A careful reading of Fénélon's interesting discussion of the right and expediency of forming offensive and defensive

A similar confusion has been made where states have combined against a power that has given evidence by its conduct that it was preparing to subjugate its neighbors in the hope of acquiring a commanding position in world affairs. We have already referred to the justice of thwarting these designs by way of prevention. Essentially this is action for self-defense, although it is anticipatory in form.

When the discussion of the balance of power ranges over these four classes of state action without distinguishing them carefully one from another, we cannot wonder that no very clear understanding of the juridical principles applying to intervention for the preservation of the balance of power has been reached.

It is interesting to follow the history of the doctrine of the balance of power, as M. Charles Dupuis has done

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alliances against a power which threatens to become preponderating shows that he was considering more particularly the obligation to organize a collective counter-intervention against a great power which should attack a weaker neighbor. (The French text is quoted by Phillimore: *Commentaries*, 1 ed., 1854, vol. I, p. 520-525.)

Halleck's discussion of the balance of power treats mainly of action to prevent conquest. (Halleck: *International Law*, ch. XIV, §§ 13-18, p. 335-8.)

Sheldon Amos says that the balance of power "...is, in fact, now little more than a convertible expression for the policy of maintaining the territorial integrity and independence of the smaller states." (Sheldon Amos: *Remedies for War*, p. 201.)

No doubt this theory has been useful to check the too rapid absorption of the small powers by their great neighbors. For centuries England has saved Portugal, Belgium, Holland, Denmark, and other small states from extinction, and this is perhaps the explanation of Sheldon Amos's sweeping statement.



for us so admirably in a recent volume.<sup>29</sup> But we are here primarily concerned in finding out what the law of intervention relative to this matter now is; and for this purpose, we are obliged to examine the practice of states. What states now do and have done in the past, and justified on the ground that the purpose of their intervention was lawful must be presumed to be so.

Among the modern writers who have studied this question, not a few have recognized that intervention for the preservation of the balance of power is justifiable.<sup>30</sup> Probably those who condemn the balance of power are thinking solely of the doctrines of partition

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<sup>29</sup>Charles Dupuis: *Le Principe d'équilibre et le Concert Européen de la paix de Westphalie à l'acte d'Algésiras*, Paris, 1909. Formerly, when public opinion was not so well instructed, the balance of power was made to justify the forcible annexation of territory, and the partition of weaker states. Among the older writers generally we find a tendency to defend the balance of power without a sufficient consideration of the means employed for this end. "For a long time," writes Dr. Lawrence, "this doctrine was accounted axiomatic. It had only to be stated to be accepted. To preserve the balance of power, states kept up standing armies, entered into wearisome negotiations and waged incessant wars. But of late years it has fallen into disrepute, and those who still maintain it set it forth in a greatly modified form. They are content to argue that civilized states have duties to perform to the great society of which they are all members, and that they should act in concert against any aggressive member of it whose unsocial conduct endangers the welfare of the whole. It is possible," he adds, "to accept this doctrine and yet hold that the theory of a balance of power is untenable." (T. J. Lawrence: *Principles*, 2 ed., § 85, p. 126.) It is interesting to see how much this statement has been modified in the fourth edition (1910, § 67, p. 133). In this revision, Lawrence justifies the action above described on the ground of self-preservation and preservation of society.

<sup>30</sup>Nassau Senior has given us a careful study of intervention for the maintenance of the balance of power, based upon the practice of the European States. He reaches a favorable conclusion, and declares that "this right of intervention" is



and the *status quo*, which cannot, as we have seen, be defended.<sup>31</sup>

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“a privilege of the weak against the strong,” and considers that “the circumstances which give rise” to this form of intervention “are tolerably definite and must always be evident.” (Nassau Senior: *The Law of Nations*, *Edinburgh Review*, April, 1843, p. 334 *passim*.)

Professor Lingelbach says: “Whatever may be said of the doctrine of the balance power from an ethical standpoint, the facts of history show that it has been a factor to which the theoretical right of independence has constantly yielded. The principle underlying the doctrine and practice has been, that the existing distribution of territory and power among the principal states at any one time is so essential to law and order in the society of nations that a disturbance of the *status quo* constitutes a valid ground for intervention.” (*American Academy of Political and Social Science Annals*, vol. XVI, July, 1900, p. 10, cf. p. 24-5.)

Professor Pillet, in his study of the Fundamental Rights of States, declares that the “balance of power is a condition which all peoples have an equal public interest in establishing and maintaining. Hence there exists a veritable right to the maintenance of the balance of power, and it is one the pursuit of which may be supported by the best reasons, since in this manner, each one speaks only for the common interests.” (Translated from A. Pillet: *Fundamental Rights of States*, in *Revue générale du droit international public*, vol. V, p. 253.)

An Italian considers that the balance of power is a “... system which corresponds to the philosophy of law and to the concept of history.” (*Memoria del Prof. Ercole Vidari: Principio di intervento*, p. 73-4; cf. p. 80.)

<sup>31</sup>“Furthermore,” declares Professor Krug, “the ostensible equilibrium is a thing so weak, fragile, and unreliable that the striving to attain it has done more to bring on war than to preserve peace.” (Translated from Krug: *Dikäpolitik* Leipzig, 1824, p. 373.)

Hermann von Rotteck does not consider that the principle of the balance of power is a legal basis, but declares that it serves as an “excuse” for the most unjust actions, and he considers that the powers “often made use of it to satisfy their designs of conquest.” (H. von Rotteck: *Recht der Einmischung*, 1845, p. xx-xxi.)

Westlake considers that nothing “...savoring of the principle of the balance of power ought now to remain, except

Turning to the practice of states, we find that a continuing and controlling majority of the states of international society have acted upon the belief that their interests would be best maintained by preventing anyone of their number from suddenly acquiring so great an accession of territory or resources as to disturb the relations of other states, and to endanger the continuance of the independence of some of them."

such precautions as in particular cases may commend themselves to a cool head not easily alarmed." (International Law, vol. I, p. 316.)

Oppenheim (International Law, vol. I, p. 193) declares: "It is necessary to emphasize that the principle of the balance of power is not a legal principle and therefore not one of international law, but one of international policy."

Similar opinions are expressed by Wheaton (International Law, Dana's ed., § 63); Bonfil: *Droit international public*, 3 ed., 1901, § 250, p. 134; Wilson and Tucker (International Law, 2 ed., § 39, p. 76).

That Hall does not discuss this question is perhaps an indication that he did not consider it a matter of law such as to justify its inclusion in his treatise.

"G. F. de Martens, writing in 1788 of an aggrandizement dangerous to neighboring states, says: "...there are cases when the law of nature [justice] cannot prohibit such states from watching over the maintenance of an equilibrium amongst them and from opposing before it is too late even with the force of arms either separately or united either a disproportionate aggrandizement irrespective of its lawfulness, or the weakening of another which might serve as a counterpoise." (Précis § 12.)

Nassau Senior writes: "Interferences, therefore, to preserve the balance of power, have been confined to attempts to prevent a sovereign, already powerful, from incorporating conquered provinces into his territory, or increasing his dominions by marriage or inheritance, or exercising a dictatorial influence over the councils of an independent state." (Nassau Senior: *The Law of Nations*, Edinburgh Review, April, 1843, p. 329.)

Phillimore states as one of the grounds of intervention, which "the reason of the thing and the practice of nations appear to have sanctioned," action taken "to preserve the balance of power; that is, to prevent the dangerous

In practice, the states have intervened severally and collectively to enforce respect for this principle.

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aggrandizement of any one state by external acquisitions." (Commentaries, 1 ed., 1854, vol. I, § 387, p. 434.)

Woolsey seems to hold a similar opinion, and writes that "it matters not whether the actual ratio of power between states is in danger of being disturbed by unjust or by just means, provided only the means are political, not economical and strictly internal. If, for instance, the sovereign of a powerful state should in a just way seat one of his family on the throne of a neighboring state, the justice of the transaction would not be a sufficient protection against the interference of other powers." (T. D. Woolsey, 1 ed., 1860, § 43, p. 92, 6 ed., § 44, p. 45.)

The treaty of Utrecht declared that France and Spain should not both be ruled by members of the Bourbon family.

The same question arose when France, in 1870, was not willing that a Hohenzollern should be made King of Spain.

An alliance between two or more states approaches and shades into the combination of states which, as we have seen, justifies objection when it endangers the equilibrium of the other states. But in practice, alliances do not prove to be as close as a real combination, and any attempt to prohibit them would lead to wars which the principle of the balance of power wishes to prevent. It is also true that they usually have no great duration, unless they serve as a necessary measure of defense. Occasionally they may serve the purpose of aggression, but the only practical and effective countermeasure is an opposing defensive alliance between the states who consider that their security is menaced.

Westlake is an eminent authority who denies that intervention is justified to prevent accessions of territory except "for the sake of justice," by which he evidently means to prevent the conqueror from stripping the vanquished of territory beyond the limits of what may be considered as a reasonable satisfaction. Westlake significantly adds: "Of course every state in turn which exacts a cession of territory after a successful war, or seeks to profit by the marriage or inheritance of its monarchs, denies that a third power has any voice in the matter. But every state in turn claims a voice in such matters when it deems it to its interest to do so." (Westlake: International Law, vol. I, p. 317, note.)

Vattel propounds a curious theory that although combination is perfectly legitimate, it may be considered as a sufficient

Why, it will be asked, is this prohibition permissible when the insistence upon the *status quo* is not? At first view it might seem that the lawful acquisition of territory through the succession of a sovereign, or through the combination or annexation of two states, was no different in principle from a dangerous preponderance of power which results from gradual growth and increase of wealth and resources. It would, however, be futile to attempt to prevent increase of power through growth. The natural force of human growth, which is more fundamental than the regulating enactments of nations, would rend asunder any system which attempted to prevent a state from using the advantages of its foresight, self-denial, and wealth to continue its state growth. But the right of increase by growth, which cannot be denied, may be reasonably regulated, so as to prevent disastrous consequences to others, and the states in practice have not hesitated to subject the exercise of any of the rights of sovereignty to such reasonable restrictions as they judged to be for the best common interest.<sup>33</sup>

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evidence of designs of conquest when each of the two nations is able alone to maintain itself in security. (Vattel, Bk. III, § 44, Carnegie translation, p. 247.)

<sup>33</sup>This right of reasonable regulation has been more fully considered above, § 9.

Fénélon points out that all the states compose a sort of society and commonwealth [république générale]. He argues that "to prevent a state from becoming too powerful was not to do a wrong, but to protect oneself and one's neighbors from subjection, and in a word to work for liberty, tranquillity, and the public safety." Referring to the vast acquisitions of territory of the House of Austria, Fénélon continues: "All Europe was justified in fearing universal monarchy under Charles V, especially after Francis I was defeated and made prisoner at Pavia. There can be no doubt that a nation that had no direct cause of difference with Spain was justified [en droit], for the freedom of all [liberté publique], in checking this rapid growth of power which seemed on the point of

Reasonable regulation of the exercise of the rights of an independent state has often taken the form of a restriction upon armament and fortification."

A special and important form of the restriction of armament is the neutralization of a portion of the territory of a state.<sup>35</sup> This application of the principle has been extended to place an entire state under the régime of neutralization.<sup>36</sup>

Regulation has been attempted with more or less success in regard to the form of government,<sup>37</sup> and the swallowing up everything." That individuals do not have this same right, Fénelon considered was because "...there are written laws and magistrates to suppress injustice and violence between families unequal in wealth; but among nations they do not exist." (Fénelon: Works, vol. xxii, p. 306 f., quoted by Phillimore, 1854, vol. I, p. 520-525.)

What Fénelon says covers the principle of reasonably restricting the exercise of the rights of independent states for the common good, but the force of these arguments, as such, is impaired by the later statement that "offensive leagues must be directed against violations of the peace, or the detention of territory of one of the allies, or against other acts of a similar nature known to have been committed." (Quoted by Phillimore, 1 ed., 1854, vol. I, p. 522.)

That action for the preservation of the balance of power is in the nature of international police would seem to be the underlying thought of Travers Twiss, when he says: "The right of confederacy under the natural right of nations is at the foundation of the right of intervention in the interest of what has been termed, since the Peace of Utrecht (1713), the balance of power." (Travers Twiss: The Law of Nations, 1861, vol. I, p. 152.)

<sup>34</sup>Phillimore (Commentaries on International Law, 1 ed., 1854, vol. I, § 211, p. 225-6) recognizes that there is a certain right of restricting the liberty of armaments essential "for the sake of the general welfare and peace of the world."

<sup>35</sup>See Oppenheim: International Law, 2 ed., Vol. II, § 72, p. 88; Westlake: Vol. I, p. 27-30.

<sup>36</sup>See Oppenheim: International Law, 2nd ed., Vol. I, § 95, p. 147; C. W. Wicker: Neutralization, 1911.

<sup>37</sup>Such, for example, as the restriction upon the organization of the German Empire, included in the articles of the Treaty of Westphalia.

capacity to enter into certain treaties. From the nature of things, such provisions must be of comparatively short duration, but they may be of great value in tiding over difficulties and putting an end to wars. That they continue to form an integral part of the existing law of nations is evidenced by the articles of the recent Peace Treaty of Versailles."

The regulatory restrictions (presumably reasonable) which the states of the world in their executive capacity have imposed upon individual states with the object of preserving international peace are usually found in the acts of the great congresses or conferences, such as Westphalia and Vienna. The powers of first rank assembled in conference have effectively exercised the executive authority of international society, and the treaties which they have signed and proclaimed for the government of all the states nonsignatory, as well as signatory, have included in express words such restrictions as they considered reasonable and necessary to effect the purpose in view."

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"See Edwin D. Dickinson: *The Equality of States in International Law*, 1920, chapter entitled, "The Equality of States in the Peace of Paris," p. 336-378.

"The collective intervention of France and Great Britain to compel the Netherlands to submit to the separation of Belgium, 1831-32, has sometimes been classed as an instance of intervention for the maintenance of the balance of power. It was a good instance of political action undertaken for the maintenance of the political equilibrium by the liberal powers, but was in violation of the settlement adopted at Vienna, since it prevented Holland from recovering territory there assigned to her partly in compensation for that which had slipped from her control during the Napoleonic wars. As Sir Vernon Harcourt (*Historicus*), pointing out that the case of Belgium was not one of recognition but one of intervention, remarks: "Anyone who will be at the trouble to examine the history of that transaction, will see that Belgium did not pretend, nor did anyone assert on its behalf, that it had achieved a *de facto* independence. On the contrary, it is

These treaties are usually known as treaties of guarantee, because the signatory powers promise to intervene to enforce them.<sup>40</sup>

International law, as evidenced by the practice of states is seen to justify a power when intervening for the preservation of international peace and tranquillity, to prevent an acquisition of territory dangerous to the security of the other states, and to enforce respect for such reasonable restrictions as are imposed upon the exercise of the sovereign rights of certain states. This action, so necessary for the enforcement of international law and the maintenance of order, will be thought by many to be no more than mere abuse of force. In consequence of this error, they may sometimes be inclined to obstruct justice by resisting the

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perfectly notorious that after the battle of Louvain, the Dutch army, but for the armed interference of France, would have reoccupied Brussels. The powers of Europe, which in 1815 had assigned Belgium to the Crown of Holland, thought themselves entitled in 1830, in the same European interest, to recast their own plan.” (Letters of Historicus, p. 5.) From a juridical point of view there was a certain justification for the intervention of the western powers since they put an end to an unnecessary struggle and imposed upon the disputants a settlement which was likely to be more permanent in that it removed a source of constant irritation.

When the great powers ride over the rights of smaller powers, it is not always easy to distinguish between proper regulation in the interests of European peace and unjustifiable interference the purpose of which is to leave the great powers freer in the pursuit of their own political aims. The latter is merely another and milder instance of the application of the partition policy which we have so severely criticized above.

<sup>40</sup>These treaties of guarantee are the record of the agreement between the signatory states to intervene in defense of the balance of power where it is endangered in the particular manner specified. The treaty does not create a new right or ground for intervention but merely provides for the fulfilment of existing rights by recourse to the action necessary for enforcement.

powers that are attempting to preserve and protect the interests of all the states by maintaining the conditions necessary to preserve peace and order. A correct understanding of the principles governing intervention for the preservation of the balance of power is, therefore, a matter of great practical importance.

### § 18. CONQUEST

Conquest is the forcible seizure, or the enforced cession of territory or rights from a state without the authorization of international law.<sup>41</sup> Otherwise ex-

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<sup>41</sup>Bernard sees this essential idea that force used to secure an unjust advantage is conquest. In his discussion of interference to enforce "one of those reversionary claims which once abounded in Europe," he says: "The forcible vindication of such rights, when they fall into possession, is not intervention, but conquest." (Bernard: *Non-Intervention*, 1860, p. 13; cf. Hall: *International Law*, 4 ed., § 91, p. 300.)

Coleman Phillipson, in his *Termination of War and Treaties of Peace*, ch. II, entitled, "Termination of War by Conquest and Subjugation," uses the term "complete subjugation" in place of what we call conquest. For him conquest is merely effective military occupation. He writes: "But in the case of subjugation—the *debellatio* of the Romans—not only have the occupying forces acquired effective possession of the territory concerned, but the adversary has been reduced to impotence and submission, or has been practically annihilated—or, at all events, all his organized resistance has disappeared—and the victorious Government has clearly manifested its intention to hold the said territory permanently under its dominion." (Phillipson: *Termination of War and Treaties of Peace*, 1916, p. 9, ch. II.)

Hall (*International Law*, 4 ed., § 204, p. 587) uses "conquest" as including this firm possession. It may well happen that a state acquire territory by conquest or otherwise, without completely subjugating it, as when Japan acquired Formosa, inhabited in part by unsubjugated tribes. Annexation we take to be the extension of sovereignty over new possessions accompanied by the indication of such intention. Consequently we reject as confusing and inaccurate Phillipson's "three steps,—conquest, subjugation, and annexation."



Other writers confuse the annexation of territory with conquest. Halleck, although he states that "hostilities were commenced by the Mexicans, and the Americans had suffered innumerable wrongs before the commencement of the war," considers that the war of the United States against Mexico was a war of conquest. The reason he gives is that the United States considered that indemnity for the past and security for the future could only be secured by retaining a portion of Mexico's territory. Halleck adds: "In its essential features it was, therefore, a war of conquest." (Halleck: *International Law*, 1861, p. 332, ch. XIV, § 8.)

Reasonable indemnity and security is not conquest, but would of course become so if they were simply made the pretext for an unjust acquisition of territory. Sir Robert Morier, in a letter of January 5, 1870, discussing Germany's conduct wrote:

"But I maintain we have no right when we sit in judgment on a contemporary political event to appeal to Utopian laws, or to apply a code which, although it may have been already elaborated and accepted by a select few, has not yet had time to become the common law of mankind. It is absurd to maintain that territorial cessions, as such, have been definitely erased out of this international common law. *Wars undertaken for the purpose of conquest undoubtedly have*, and it is because the war of 1870 was really a war of this kind, and was felt to be but a link in an ascending series of such wars waged by France, that it raised such universal indignation amongst all right-minded people. A cession of territory demanded by the aggrieved party as a penalty to be paid by the unsuccessful aggressor, and on proof given that such cession is necessary to guard against a renewal of aggression, is not only not erased from the modern international code, but was solemnly placed on record in the treaty of peace with Russia in 1856. There is, moreover, a striking parallel between the principles which ruled our action on that occasion, and that which rules the action of Germany in demanding Alsace. In both cases the *desideratum* was, and is, the removal of the aggressor from the banks of a river which had before constituted his frontier, and the placing of the aggressed in full possession of both banks of the river." (Memoirs and Letters of Sir Robert Morier, 1911, vol. II, p. 223.)

When a powerful state has a weaker at its mercy, it may not be necessary actually to employ force in order to secure the coveted territory, and even if the acquisition of the

pressed, conquest is a violation of international law."<sup>4</sup>  
History furnishes many examples of conquest, and

territory wrested from the possessor is confirmed by a formal treaty, the act remains none the less one of conquest whenever force is relied upon unjustly to constrain the owner to make the cession.

"Every system of law has for its main purpose to guarantee the peaceful enjoyment of rights. It cannot, therefore, justify conquest, but we must remember that the law is not law unless it is enforced sufficiently to make it respectable and valuable to those who observe it and help to support it. In its earlier stages law could not hope to be respected if it were to rigidly condemn conquest, for the instinct of conquest is too deep in the human heart. Even now, international law cannot hope to do more than to repress the worst evils of unlimited recourse to force. The old rule was that conquest was lawful when made in consequence of a just war.

As an illustration of the prevalence of this doctrine we quote the following portion of Professor Callahan's summary of Secretary of State Everett's note of December 1, 1852, relative to Cuba, addressed to the British representative: "The United States was not seizing islands in the Mediterranean, and she would not take Cuba by force except in a just war. She had no desire to be a disgrace to civilization." (See Callahan: *Cuba and International Relations*, 1899, p. 234-5.)

Franciscus Victoria of Salamanca in the sixteenth century, declared: "Extension of empire is not a just cause of war." (Victoria's *Relationes, De Indis et de Jure Belli Relectiones*, Carnegie translation, p. 170. The first edition of the *Relectiones* was printed at Lyons, 1557.)

The illegality of conquest is recognized by many other authorities. Vattel, referring to "purposes which may furnish lawful reasons or unjust pretexts, but which are at least capable of being construed as just," observes: "For this reason I do not offer conquest or the desire to usurp the property of another as one of the purposes of offensive war; such a purpose, lacking even the semblance of right, is not the object of formal war, but of brigandage, of which we shall speak in its proper place." (Vattel: *The Law of Nations*, 1758, Bk. III, ch. 1, Carnegie translation, p. 236.)

John Stuart Mill considers it an "affront to the reader" to discuss war of conquest even as a result of lawful war. (*A Few Words on Non-Intervention*, *Frazer's Magazine*, May, 1859, p. 773; Cf. Grotius, Bk. II, ch. I, I, §§ 3-4.)

certain writers like Bernardi and Steinmetz have unblushingly advocated it,<sup>43</sup> but no modern government,

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The illegality of conquest is best shown by the practice of states, which furnishes many instances of counter-intervention. It is true that the powers do not come to the support of the state unjustly attacked at the moment when war breaks out. The aggressor may be trusted to choose the moment so that they will not find this convenient. Occasionally the powers intervene to prevent an attack. They did so in 1875 to check Bismarck's onslaught on France, but usually they wait for an opportune moment when the warring states are exhausted by the struggle. England intervened diplomatically, for example, in 1871 to prevent Prussia from exacting as great a pecuniary indemnity as she purposed. This is not a perfect sanction; it is, however, the most effective which international law has yet been able to invent.

<sup>43</sup>"When a state great and powerful in the course of its development has for its expansion a real need for the territory of a small state, it does not seem to me that the conquest of the latter can be contrary to the interests of humanity." (Steinmetz: *Evolution Collective*, p. 245.) In a contrary sense, see Phillipson: *Termination of War*, p. 29-30.

Professor Amos S. Hershey writes: "Several leading authorities refuse to recognize conquest as a legal mode of acquiring territory, but this view is in contradiction with the facts of historical development and international practice. Whatever may be said as to the desirability of abolishing the so-called right of conquest, and however desirable that the validity of titles based upon fraud and violence be denied, we cannot substitute our wishes for realities or create rules of international law by ignoring the practice of nations." (Hershey: *Essentials of International Law*, p. 180-181.)

Rivier expresses similar views, and remarks, "Conquest justifies itself by its existence, like war, of which it is a natural consequence; and I do not believe, notwithstanding the noble and touching words which are spoken and printed, that any statesman directing important international affairs seriously thinks of abolishing it." (Translated from Rivier, vol. I, 1896, p. 181.)

Coleman Phillipson (*Termination of War*, p. 19) falls into the same error. The writers who express this opinion have failed to understand the difference between the acceptance of *de facto* possession, whatever its origin, as a basis for recognition, and the acceptance of the legality of conquest *per se*.

however strong or however ill-intentioned, has dared to proclaim a war of conquest or to justify conquest as such. Whenever conquest was the motive, some other pretext has been alleged to cover it.<sup>44</sup>

Lord Palmerston, in a letter to Lord Clarendon in 1853, gives us the following remarkable description of the older methods of conquest as employed by the Russian Government: "The policy and practice of the Russian Government has always been to push forward

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<sup>44</sup>Almost any of the justifiable grounds for intervention may serve as a pretext for unjustifiable conquest. The reason for this lies in the wide measure of discretion which every state enjoys in deciding when it has reason to employ force. In a preceding note, we have referred to instances of conquest which result from the attempt to enforce reversionary claims to succession. (See Bernard: *Non-Intervention*, 1860, p. 13.)

Exaggerated demands for indemnity is another pretext, and humanitarian intervention is so good a cover for illicit designs of conquest, that in the eyes of some authorities it taints the whole institution. They would, in consequence, cancel humanitarian intervention from the list of justifiable grounds of intervention.

Another disguised form of conquest is a lease for a long term of years, with so complete an exercise of authority as to constitute a virtual annexation. (See Westlake: *International Law*, vol. I, p. 135-6.) This form of annexation is particularly advantageous because in the event of other nations raising too strong an objection, the lease can be canceled without so serious a hurt to national susceptibilities as would result from the retrocession of territory formally annexed.

A particularly dangerous and popular pretext for conquest is the doctrine of nationality or self-determination, which claims a right for the people of similar race, language, etc., to unite under the same national authority.

Bernard asks: "Is it lawful to invade and conquer, without a quarrel, the territories of a friendly sovereign, provided you are able to affirm that you believe the conquest will be agreeable to his subjects, and can obtain a vote in your favor when it is virtually complete? It seems to be an opinion now in fashion that nationality in such a case is a sufficient plea. I own that I can hardly imagine a doctrine more subversive of morality, or more dangerous to freedom." (Bernard: *Non-Intervention*, 1860, p. 26.)

its encroachments as fast and as far as the apathy or want of firmness of other Governments would allow it to go, but always to stop and retire when it was met with decided resistance, and then to wait for the next favorable opportunity to make another spring on its intended victim. In furtherance of this policy, the Russian Government has always had two strings to its bow—moderate language and distinterested professions at Petersburg and at London; active aggression by its agents on the scene of operations. If the aggressions succeed locally, the Petersburg Government adopts them as a '*fait accompli*' which it did not intend, but cannot, in honor, recede from. If the local agents fail, they are disavowed and recalled, and the language previously held is appealed to as a proof that the agents have overstepped their instructions. This was exemplified in the Treaty of Unkiar-Skelessi, and in the exploits of Simonivitch and Vikovitch in Persia. Orloff succeeded in extorting the Treaty of Unkiar-Skelessi from the Turks, and it was represented as a sudden thought, suggested by the circumstances of the time and place, and not the result of any previous instructions; but having been done, it could not be undone. On the other hand, Simonivitch and Vikovitch failed in getting possession of Herat, in consequence of our vigorous measures of resistance; and as they failed, and *when* they had failed, they were disavowed and recalled, and the language previously held at Petersburg was appealed to as a proof of the sincerity of the disavowal, although no human being with two ideas in his head could for a moment doubt that they had acted under specific instructions." (Ashley: Life of Lord Palmerston, 1876, vol. II, p. 25-26.)

In this polite age, conquest is usually effected under the guise of an indemnity for a war proclaimed to have been undertaken in defense of international law rights.

In some instances the cession of territory is exacted as security against the recurrence of the offenses alleged to have justified recourse to arms.

It is not necessary to enter into any further discussion of conquest as a justifiable purpose of war, but the question as to the legality of conquest has been much confused because of the failure to perceive the distinction between the illegality of conquest and the legality of the consequences which often result directly from a conquest. It is of primary importance to international society that every territory should have a responsible master able to police it for the maintenance of peace and for the fulfilment of international law. It is not yet practicable to hold the title to important territory in abeyance because it has been illegally acquired.<sup>45</sup> For the same reason that a certain

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<sup>45</sup>The illegality of conquest permits any and all states to intervene with force in as far as is necessary to counteract it. This is no interference, but a true example of the vindication of the law such as we discussed above under § 7. (See Westlake, vol. I, p. 317.)

But if the circumstances are such that none of the powers avails itself of the presumption justifying counter-intervention to defend the state which is attacked, practical considerations require that the results of the conflict be accepted as a fact and the right of counter-intervention, not having been exercised at the time, must be considered to have lapsed. Such a rule shocks our sense of justice, but is necessary to the preservation of the society of states, without which all justice would disappear. When the nations in their wisdom shall have established a more perfect union, it may be possible to prevent all aggression and compel the despoiler to disgorge. Under present conditions, the security of international society would be seriously jeopardized and its resources uselessly dissipated by any attempt at a delayed rectification of wrongs which the nations had not the will or the power to prevent at the time of their commission.

This is the reason for the adoption of the principle of *uti possidetis* when wars are terminated without a treaty of peace. (Cf. Phillipson: *Termination of War*, p. 7; cf. Westlake, vol. I, p. 65.)

period of adverse possession gives title to land in our common law, any territory acquired by conquest is presumed legally to belong to the conqueror as soon as forcible opposition to the conquest ceases and the other states refrain from publicly impugning the title.<sup>46</sup>

There is evidently a great field for the further gradual restriction of the more injurious forms of conquest. This progress must be based upon a clearer definition and understanding of the nature and function of the derivative forms of conquest. We may expect the powers gradually to become nicer in regard to the recognition of title resting merely upon firm possession after conquest.<sup>47</sup> In the course of time we may also expect that conquest will be defined more carefully and rigidly, so as to place under the ban certain disguised and more refined methods now used to obtain by force what belongs to another.

### § 19. TREATY RIGHTS

It is often erroneously stated that a right of intervention arises from a treaty. This is a misunderstanding.

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<sup>46</sup>Cf. Hall, 4 ed., p. 588, § 204. It is the custom of many writers on international law to class those cases where the acquisition of territory has been confirmed by treaty as ordinary cessions of territory, without distinction as to whether they are based upon conquest or not. Perhaps a sense of international decency has exercised some influence in this matter, since the territorial growth of all the great states is marked by acts of conquest, even though the decent clothing of a treaty has been thrown about them. A treaty has generally terminated the violent opposition to a conquest, but it cannot transform what was really a conquest into an instance of voluntary cession. The treaty does, however, evidence the fact of the firm possession.

<sup>47</sup> It is interesting to examine Secretary of State Blaine's plan proposed before the International American Conference (1889-90) for declaring conquest in America illegal. (See Moore: Digest, Vol. I, p. 292-3.)

ing. Treaties do not create rights, they record them.<sup>47a</sup>

The procedure of international law allows each state a very wide discretion in judging how far the circumstances will permit it to go in the fulfilment of its obligations to enforce international law, and this uncertainty reacts on other states, who are deeply concerned in knowing how the state will interpret its obligations and what policies it will pursue. To obtain this assurance, states enter into agreements recorded in treaties that they will or will not act in a particular manner.<sup>48</sup> Evidently such an agreement must look to the performance of acts which are in themselves legal under international law. Otherwise to fulfil the treaty would be to violate international law, and this no nation may justly promise or require. Treaties which record an agreement to interfere in the internal affairs of the signatory or of other sovereign states are without any standing in international law, and cannot be made to justify the interference which they contemplate. No state can retain its independent status if it agrees to transfer to another the liberty to interfere for the preservation of a particular form of government.<sup>49</sup> Such

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<sup>47a</sup>“Treaties are unable to create anything, they simply show what the powers consider and recognize as the law based on custom.” (Translated from J. de Louter: *Le droit international public positif*, 1920, Vol. I, p. 54.)

“A guarantee secures a right, but never gives it originally its force.” (Translated from G. Quabbe: *Die Völkerrechtliche Garantie*, Breslau, 1911, p. 13; cf. K. G. Idman: *Le Traité de grantie en droit international*, Helsingfors, 1913, p. 81-2.)

<sup>48</sup>We may give as an example the agreement of Louis XIV not to give any further asylum to the Stuart Pretenders (Sir George Cornewall Lewis: *On Foreign Jurisdiction and the Extradition of Criminals*, p. 68.)

<sup>49</sup>Mountague Bernard, discussing the alleged right to intervene “when a right to interfere is secured by contract, as it may be when the intervening state has guaranteed the maintenance of a particular dynasty or of particular institutions,



an agreement would be equivalent to a signing away of international sovereignty, and would, if duly entered

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or by virtue of a protectorate or a federal pact'' (Bernard: Non-Intervention, 1860, p. 11), considered that this exception to the general rule of non-intervention [non-interference] "may be disposed of in a few words," which he proceeds to supply: "A guarantee of a throne to a family, or of a particular form of government to a people,—such a guarantee, for instance, as that of the Protestant Succession in England, of the power of the Stadtholders in Holland, of the Braganza dynasty in Portugal, of monarchical institutions in Greece,—does not, unless by express words or clear implication, extend to internal troubles; and, even when it does, gives to the state undertaking it no right to interfere, unless called upon to do so. Of a general agreement creating such a right whilst the state which yields it remains nominally independent, I do not hesitate to say that it is one into which no government is authorized to enter. No government is authorized to degrade by compact the country it rules into a condition of real vassalage, whilst retaining the name and responsibilities of independence. 'It is impossible to imagine,' wrote Lord Aberdeen in 1828 to the Brazilian Envoy, who asked assistance against Don Miguel on the strength of our ancient treaties with Portugal,—'it is impossible to imagine that any independent state could ever intend thus to commit the control and direction of its internal affairs to the hands of another power.' The separate and secret article annexed to the Treaty of the 12th of June, 1815, between the Emperor of Austria and the King of the Two Sicilies, whereby the latter promised that he would admit, in re-establishing the government of his kingdom, no change incompatible either with old monarchical institutions or with the principles adopted in the Austro-Italian provinces, was defended in 1821 by Lord Liverpool as 'in perfect consonance with the spirit of ancient treaties, founded on the clearest principles of international law, and which had formed part of it from the beginning of time.' I venture to affirm, on the contrary, that it was a vicious engagement, out of which no rights could arise. The question is less simple, and the principle more feebly applies (if it applies at all), where, as in the case already mentioned of a 'protected' state, or in that of a member of a federal commonwealth like the German, there is a partial loss or surrender of independence. The Austrian intervention in Hesse Cassel in 1850 derived some color, though no justification, from the fact that, for the sake of

into and acquiesced in by all the interested states, amount to the establishment of a supervisory control

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a perpetual defensive alliance and from the sense of a common nationality, the minor German States have substantially submitted themselves to an indefinite, and therefore mischievous, control by confederates more powerful than themselves." (Bernard: *Non-Intervention*, 1860, p. 14-15; cf. Hall, 1 ed., 1880, § 93, p. 248; *ibid*, p. 306.)

Twiss, who devotes a considerable space to the discussion of treaties guaranteeing a particular form of government, emphatically declares that "a convention of guarantee *nude and absolute* does not apply to the case of political changes." (Travers Twiss, *Law of Nations*, vol. I, 1861, § 231, p. 367-379.)

Halleck remarks: "But, in treaties of equal alliance, between independent and sovereign states, will a stipulation of mediation or guaranty justify generally the interference of one state in the internal affairs of another, contrary to the wishes of the latter? If the interference is in itself unlawful, can any previously existing stipulation make it lawful? We think not; for the reason that a contract against public morals has no binding force, and there is more merit in its breach than in its fulfilment. (Wheaton, *Elem. Int. Law*, pt. 2, ch. 1, §§ 13-16; Kluber, *Droit des Gens*, pt. 2, tit. 1, ch. 2, § 48; Phillimore, *On Int. Law*, vol. 1, § 393; Polson, *Law of Nations*, sec. 5; *Bello Derecho International*, pt. 1, cap. 1, § 7.)" (Halleck, *International Law*, ch. IV, § 8, p. 86.)

Creasy quotes this passage from Halleck with approval (*First Platform*, § 320, p. 306-7.)

Theodore D. Woolsey, in the fifth and last edition of his *Introduction to International Law*, which he revised himself, adds the following explanatory note: "If the principles of intervention cannot stand, treaties of guaranty, which contemplate such intervention, must be condemned also; for they have in view a resistance, at some future time, to the endeavors of third parties to conquer or in some way control the guaranteed states in question. An agreement, if it involve an unlawful act, or the prevention of lawful acts on the part of others, is plainly unlawful." (*International Law*, 5 ed., 1878, § 43, p. 44.)

Hall (*International Law*, 1 ed., 1880, p. 248, § 93, 4 ed., p. 305-6) expresses the same idea.

But some of the most respectable of the older writers fall into the error of supporting a contrary view. See F. de

or protectorate.<sup>50</sup> A change of such serious import cannot be presumed to be intended, and any govern-

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Martens, *Völkerrecht* [Bergohm's translation], § 76; Klüber, *Droit des gens*, 1 ed., 1819, § 51.

Even so late as 1910, we find in T. J. Lawrence's fourth edition of his valuable *Principles of International Law* (§ 64, p. 126) this persistent error. He writes: "If a state has accepted a guarantee of any of its possessions, or of its reigning family, or of a special form of government, it suffers no legal wrong when the guaranteeing state intervenes in pursuance of the stipulations entered into between them, though it may suffer moral wrong when those stipulations are in restraint of functions it ought to exercise freely, for example, the choice of its rulers." (T. J. Lawrence: *Principles of International Law*, 4 ed., 1910, § 64, p. 126.)

Professor Lingelbach criticises Lawrence's view that intervention when based upon a treaty is always legal. (See W. E. Lingelbach: *Intervention in Europe*, *Annals of the Academy of Political and Social Science*, vol. XVI, July, 1900, p. 24.)

Among the writers who deny the right of interference in constitutional affairs even when based upon a treaty are: Rossi (*Archives de Droit*, 1837, p. 375); Rotteck (*Einmischung*, 1845, p. 26); Milovanowitch (*Des traités de garantie en droit international*, 1888, p. 38-39); Quabbe (*Die Völkerrechtliche Garantie*, 1911, p. 13); Louter (*Droit international public positif*, 1920, Vol. I, p. 519.)

Other older authorities who recognize a treaty as giving a right to intervene are: Günther (*Volkerrecht*, Vol. I, 1787, p. 287-8); Kamptz (*Völkerrechtliche Erörterung*, 1821, p. 32-5); Krug (*Dikäpolitik*, 1824, p. 329-30.)

<sup>50</sup>Article III of the treaty of May 22, 1903, between the United States and Cuba provides:

"The government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the Treaty of Paris on the United States, now to be assumed and undertaken by the Government of Cuba." (Malloy: *Treaties*, vol. I, p. 364.)

This permission to the United States "to exercise the right to intervene" merely recognizes the supervisory capacity of the United States. It is therefore perfectly legitimate, but

ment which should promise to another such liberty of interference would be acting *ultra vires*, that is, beyond its powers, unless it were shown that the nation as a whole had, after due consideration, intended to accept the inferior status of a protected state.

There are, however, instances in which treaties relative to interference in the internal affairs of fully sovereign states are in accord with international law, and must be considered as valid. We refer to stipulations which evidence the agreement of the concert of powers to restrict the exercise of rights of sovereignty for the defense of the interests of international society, as, for example, when the Great Powers excluded Napoleon from the throne of France.<sup>51</sup>

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at the same time it indicates the partially dependent status of Cuba.

President Wilson's administration, during the winter of 1914-15, sounded the representatives of South American countries relative to the conclusion of a treaty, one of the articles of which, as published in the press, provided for "the mutual guarantee of territorial integrity and of political independence under republican forms of government." (Moore: *Principles of American Diplomacy*, p. 406-8.)

Of course, it is hardly to be expected that the states of South America would intervene in the internal affairs of the United States for any purpose whatsoever, and such a treaty, although equal or mutual in form, would amount to a guaranty accorded by the United States to the lesser contracting powers, and as such it would be indicative of the relation of protector to protected state. Any right of interference in the internal affairs of the states concerned would not necessarily arise from the treaty, but from the inferior status of certain of these states, of which the treaty would be but the formal expression.

<sup>51</sup>Such an exercise of the power of international police regulation is as we have seen (§ 9) valid only when it is reasonably necessary. But a treaty signed by an overwhelming majority of the states, or even by a concert of powers which exercises certain executive functions is *prima facie* valid.

In conclusion, we may summarize the results of our discussion: whenever the justification of intervention

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The treaties of Westphalia and Utrecht, for example, contain provisions relative to the internal affairs of certain states and authorize intervention therein. The provisions were rightly considered as justifiable efforts to preserve the peace of Europe and the independence of all the states.

The treaty by which the powers agreed to exclude Napoleon from the throne of France was, under the circumstances, a perfectly proper exercise of international police power. But not so the treaty signed by Austria, Prussia, and Russia for the partition of Poland, for it was not done in the interest of Europe. France and England did not consent, and the act itself was evidently undertaken more to sate the greed of the partitioning powers than to insure the peace and security of Europe.

Because general treaties providing for the reasonable exercise of international police are legal, it does not follow that other treaties which contemplate interference by a particular state are likewise legal. On the contrary they are without any legal foundation whatever, unless they merely confirm a supervisory relationship such as has long existed between England and Portugal and now exists between the United States and Cuba. (Cf. Bernard: *Non-Intervention*, p. 15, relative to the German Confederation.) The failure to understand this important distinction has led several of the most respectable authorities into the error of justifying interference in constitutional questions when the action was in fulfilment of a treaty stipulation. (See F. de Martens: *Völkerrecht* [Bergbohm's translation], § 76; Heffter: *Völkerrecht*, § 45.) Hall also is confused (see *International Law*, 4 ed., § 91, p. 300.) Later writers have fallen into the opposite error of passing over international police regulation, and denying any right to intervene in constitutional matters. In consequence of this erroneous premise, they reach the false conclusion that all treaties purporting to give this right are illegal.

Hall is not free from this confusion, although he perceives that the treaties to which he refers were probably once in conformity with international law. He remarks: "It may perhaps at one time have been an open question whether a right or a duty of intervention could be set up by a treaty of guaranty binding a state to maintain a particular dynasty or a particular form of government in the state to which the guaranty applied. But the doctrine that intervention on

is based upon a treaty, it is necessary first to show that the purpose of the treaty was legitimate. Treaties

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this ground is either due or permissible involves the assumption that independent states have not the right to change their government at will, and is in reality a relic of the exploded notion of ownership on the part of the sovereign. According to the views which are now held as to the relation of monarchical or other governments to the states which they represent, no case could arise under which a treaty of the sort could be both needed and legitimate. As against interference by a foreign power the general right of checking illegal intervention is enough to support counter interference; and as against a domestic movement it is evident that a contract of guaranty is made in favor of a party within the state and not of the state as a whole, that it therefore amounts to a promise of illegal interference, and that being thus illegal itself, it cannot give a stamp of legality to an act which without it would be unlawful." (W. E. Hall: *International Law*, 4 ed., 1895, § 93, p. 305-6.) Continuing in a footnote, he says: "Some treaties, e. g., the Treaties in 1713, by which Holland, France, and Spain guaranteed the Protestant succession in England (Dumont, viii. i. 322, 339, 393), and the Final Act of the Germanic Confederation, arts. 25 and 26 (De Martens, Nov. Rec. v. 489), contains guaranties which clearly extend to cases arising out of purely internal troubles; most treaties of guaranty, however, are directed against the possible action of foreign powers." Hall also gives several of the references which we have cited above, showing the care with which he has considered this question. (See also Halleck, ch. IV, § 8, p. 86; Twiss, vol. I, § 231.)

Although G. F. de Martens (*Precis* [ed. 1821], § 78) seems likewise to err, we see in a later portion of his work (§ 115) that he only considers a treaty to authorize interference in matters which are not essential to the independence of the State.

Bluntchli avoids both pitfalls by a guarded statement: "It may happen that a state intervenes when the rights which have been accorded to it by treaty are affected by changes which occur in the constitution of another state. It may not, however, do so unless international law authorizes it to defend the rights in question. Thus the overthrow of the dynasty, or a change in the order of succession due to a revolution, are questions of constitutional, but not of international law." (Translated from Bluntchli: *Das Moderne Völkerrecht*, 1868, § 479, note 2.)

which have the support of a majority of the states are, however, to be presumed to be a sufficient justification for the acts they contemplate, unless it be shown that the provisions of the treaty constitute an unreasonable curtailment of the rights of an independent state not necessary for the peace and security of international society.

## CHAPTER IV

### POLITICAL ACTION

#### § 20. IMPERFECT RIGHTS AND DUTIES

If the wisdom of man were perfect, he would discover and formulate perfect laws for the government of nations; but imperfections are inevitable, and an unwise law will check progress, lead to abuse, and finally be disregarded or replaced by a better. But we must have laws for the nations, since without them international intercourse were impossible. The laws which are adopted must not be so rigid or so extensive as to exceed the juridical experience of the law-givers. In other words, it is not yet possible to regulate too definitely the whole of the relations of the states, and the rules which are adopted will be found to be more practical if they have a certain margin for play or a certain room for variation in the manner in which they are fulfilled.

The system applied by states in practice will be found to coincide with that we have outlined, reasoning abstractly. The necessary play or elasticity we find to lie mainly in the discretion which each independent state at present enjoys as to the manner in which it will fulfil its international obligations.

This play or elasticity in the enforcement of international law is an inevitable consequence of the system of self-execution, sometimes less accurately called self-help, and partly for this reason, perhaps, this archaic method of procedure is still preserved in international relations. At one time, before the juridical wisdom of



our ancestors made it possible to form a more complete governmental organization, we used to employ the same system in our civil affairs.

An independent state sufficiently powerful to benefit from this system of self-execution is given a great opportunity to follow its own judgment in determining in the first place what its international rights and obligations are, and in the second place how and when these obligations should be fulfilled and these rights maintained. A great state is thus able to serve its selfish ends, and in the guise of fulfilling and defending the law to find a pretext for the protection of its own interests. Furthermore a state may enter into agreements with other powers in regard to the manner in which rights will be pressed, and this again may serve to foster or protect its special interests.

The recognition of a new state or government affords a good example: When the inhabitants of an area sufficiently large and advantageously situated for the practical purposes of maintaining national independence are organized under a government firmly established in its control of the territory in question, and when this government is capable and willing to fulfil the obligations of an independent state, international law declares that this state which exists *de facto* should be recognized *de jure* as a member of the international society. The denial of recognition to the *de facto* state, possessing *de facto* qualifications for the recognition of independence, may and usually will result in a recourse to reprisals for the purpose of enforcing its right. It is evident, however, that the decision as to when the qualifications requisite for statehood have been fulfilled cannot be set down with absolute precision, consequently it is free to every state to give or withhold its recognition, and in reaching this decision, it may be guided by selfish considerations.

The course which a state adopts for the protection of its national interests and the particular interpretation of international rights and obligations, which national sympathy or national interests dictate, are spoken of as policies of the government in question. Sometimes when they are persistently followed, notwithstanding changes in the personnel of the government, these policies are said to be national or state policies. Otherwise, they are merely temporary policies, what we call administration policies.

President Wilson, for example, did his utmost to commit the American Government to a policy of continued participation in the settlement of European differences. Under President Harding, the Executive and Legislative branches of the Government, so far as the latter has a part in the determination of our foreign policy, seem to concur in their firm resolve to adhere to the traditional policy of the United States, and to avoid in as far as possible participating in the settlement of European political controversies.

Enough has been said to indicate how much room is still left for the discretionary or political action of each independent state. Within these limits, the state which is sufficiently powerful to make use of this liberty of action may determine the policy which it will adopt, and in a large measure it may be expected to choose this policy with a view of protecting its important interests.

The condition which we have just described means that many of the rights and duties of states are still imperfect in the sense that their fulfilment depends upon the will of the interested parties and impartiality is not sufficiently guaranteed by an effective sanction. Obviously this is a defect, but it is one which cannot be remedied until the nations are sufficiently wise to per-

fect their law and until they are willing whenever the occasion arises to make the sacrifices necessary to ensure its enforcement.

### § 21. POLITICAL INFLUENCE

It might perhaps be thought that the place allowed to governmental discretion in the fulfilment of the state's international obligations and the insistence upon its rights would afford an ample opportunity for the powers to protect their interests, without any departure from the strict limits of legal action. Nevertheless, the states enjoy still other means to guard over and to foster interests which appear of a sufficient importance to warrant the effort. Every powerful state makes use of its political influence to induce its neighbors, especially its weaker neighbors, to adopt the course which the powerful state believes will prove most advantageous to itself. This influence is, as we have said, especially potent with the smaller states, who fear to give offense. To ignore the suggestion from a great state may cause the latter to seek at the first opportunity a pretext for employing its superior force against the weaker, or—what is more likely to occur—it may lend its influence covertly to support the internal enemies of the government until they overthrow and replace it with one more pliant to the foreign will. Even though the great state do no more than to insist upon the meticulous observance of the letter of its strict rights in all their relations, the resulting inconveniences and annoyance might prove intolerable for the weaker state. The continuance of international intercourse always presupposes a neighborly spirit of give and take. Whenever a great state relies upon its superior force to make its weaker neighbor line up to the strictest interpretation of its rights while it continues to

allow itself the habitual latitude in fulfilling its reciprocal obligations, the weaker state must surely yield unless it find as champion some other powerful state.

The smaller and weaker states recognize this situation before matters proceed too far and yield with good grace to a reasonable dictation in matters of policy whenever they find themselves without the counterbalancing support of a rival great state. The practical consequence is to bring the smaller states within the political orbit of their most powerful neighbor. This mutual bond of protection and dependence offers a large opportunity to the paramount state for the exercise of political direction in all matters which in its judgment are important for the health and growth of this political affiliation.

It will be evident to all how large a place political action still holds in the intercourse of independent states, equal though they be as regards the rights which have been recognized as a part of their common—that is international—law.

## § 22. ADJUSTMENT

Since the object of international law is the preservation and prosperity of the society of states, it follows that the rights which it has recognized for the protection of each state are subject always to the restriction or proviso that they be not used to the detriment of the others.

Otherwise stated, each state is obligated not to insist upon its own right when it will thereby cause a disproportionate injury to the interests and prosperity of others. The conflict between the opposing rights or between rights and interests is to be settled on a basis of a reasonable compromise. Just what this compromise

is in any particular case is a matter of fact to be determined by the states concerned in the same manner as the determination as to the grounds of intervention previously discussed. When either state proves unreasonable and gives evidence of an uncompromising spirit such as to prevent the adjustment of the conflict, a right of intervention upon this ground arises.

It is not the right to decide when the protection of interests requires recourse to force which is the ground of this action, for that is a matter of individual or subjective appreciation which cannot override the right of another state to insist upon the respect of its sovereignty and independence. But when these rights of sovereignty or independence are abused, there arises an offence against the common interest of all the states. For the common interest and prosperity depend upon the prosperity of the individual member. If one member state refuses to depart somewhat from its technical or formal rights of sovereignty and independence in order to facilitate for a sister state the conservation of its important interests, there is an abuse, an antisocial uncompromising spirit which is a justifiable ground of intervention.

It has long been recognized as a precept of international morality that every state should evince a spirit of reasonable compromise for the adjustment of all controversies which threaten to disturb the peace of nations, but the study of international relations shows that this obligation is something more than a precept of morality the fulfilment of which is left to the conscience of the separate states. It is a legal duty rightly recognized as a rule of international law, since

it meets successfully the tests of its jural character, in that it is observed by the states in their practice and enforced by appropriate action. When once we perceive that the obligation to agree to a reasonable compromise is a rule of international law which all the states are obligated to intervene to enforce, we have brought every political controversy within legal limits and we are able to set bounds to the hitherto uncontrolled freedom of political action.

The recognition of the principle of the obligation to compromise one's rights and interests upon a reasonable basis to preserve the peace brings all recourse to force under the domain of law, and permits other states to counter-intervene against a state that has shown an uncompromising attitude or abusively insisted upon its rights. Gradually through experience and through a better understanding of the principles of political science it will be possible to lessen the uncertainty in regard to the basis of a reasonable adjustment.

To those who would reject this principle of intervention to enforce respect for the right of reasonable adjustment we can only point out that the alternative is to permit every state in the exercise of its full and unrestricted discretion to decide when it is necessary to employ force for the defense of its rights and interests and to decide for itself to what degree it will push its insistence thereon. This is the doctrine of perfect rights, and covers for those who accept it the intolerable doctrine of absolute necessity, that is, the right of every state to disregard any right where it believes it necessary for the preservation of its existence. What rational being will discard a system admittedly imper-

fect, it is true, as regards its definition, but capable of gradual improvement and ultimate perfection, for a system which enthrones brute force and recognizes doctrines of international anarchy?

## CHAPTER V

### CONCLUSION

#### § 23. THE RULE OF REASON

In the foregoing pages we have analyzed the various grounds upon which intervention may justly be undertaken to defend international law rights either by way of interposition or international police. We have attempted to draw the line between the due exercise of sovereignty which the law of nations recognizes and the abusive insistence upon independent action without consideration of the equally important rights of other states and the interests of the common weal. Whether the state is acting in the defense of a recognized right or in pursuit of its interests, there is no absolute or perfect right, but all rights are to be asserted with due regard to the preservation of the independence, security, and prosperity of neighboring states. Rights which have been given for the common good of all the states may not be perverted to menace international security.

Finally as a result of our investigation of what we may call rights in political action, we laid down a rule of the broadest application: that the employment of force under international law, whether it be to defend rights or to protect and foster interests, is always limited by the condition that there shall first have been made a reasonable effort to reach an amicable adjustment.

It remains for us to define what effort is "reasonable."



Every state we have seen has a sovereign right to decide when its rights are menaced and when its vital interests are in jeopardy. If it were likewise at liberty immediately to employ its force upon the warrant of this sovereign determination, there would be no security for any state and international law would be an empty word.

- To keep within the bounds of law every state that employs its might to defend its rights or to protect its interests against the abusive insistence upon alleged right by another must first justify its action before its sister states; it must second observe all the delays and forms of procedure customary in international practice; and it must third—outwardly at least—evince a disposition to adopt any suggestion or compromise which gives promise of a peaceful solution without sacrificing its own important interests or the means to enforce them.

In each one of these steps the state itself has in first instance the sovereign right to decide whether it has fulfilled the law, but at each step also the family of states are free—nay they are bound—in as far as the circumstances will permit, to correct any erroneous or unjust decision.

- In international society, as in every society which is at the stage of self-execution, there must always be such an appeal from the subjective (sovereign) decision of the individual state judging the rectitude of its own conduct to the forum of general public opinion—to the consensus of opinion of all the states. }

- In this manner the application of the law of intervention is guided by the opinion of all of the states fixing the limits of the reasonable discretion which each state may enjoy in acting for the defense of its own
- rights and interests. This builds the whole system of

international law upon the foundation of what the consensus of the states judge to be reasonable under the rule of reason.

In those questions where there is no consensus of opinion but only opposing views supported by forces approximately equal, there can be no rule of law.

The nations are then not ready to recognize the opinion of either group as the rule of law. They must muddle along by some half-way measure. The states must expect to accept some compromise to govern each of such differences as it arises or to try a temporary expedient until such time as the partisans of the opposed views are better informed as to the limits of their rights and as to the relation of the forces with which the opposing opinions can be sustained.

Upon this basis of appeal to the tribunal of international reason as interpreted and supported by the consensus of opinion in a preponderating majority of the states, the just peace of nations rests. Upon this basis the majority of the states do in ultimate analysis insist that the law of nations be observed. In those other non-legal or extra-legal relations which are designated as political, there is likewise a supreme and guiding—one might better say limiting—rule of law to guide state action: namely that every state shall evince a broad spirit of tolerance—an attitude of live and let live. This guiding rule may be formulated, as we have seen above, as the legal obligation that states in their political controversies shall observe—the rule which enjoins upon them to agree to a reasonable compromise of their differences.

If we have succeeded in defining the legal grounds of intervention, including that of intervention justified upon the ground of the refusal to agree to a reasonable adjustment or compromise, we have made it possible for the enlightened public opinion of the states con-

cerned and of the whole world to support the governments that reasonably observes the law.

For generations it has been the custom of governments to justify their recourse to force before their nationals, and it will be no small guarantee of the observance of the law when governments understand that their explanations and excuses must stand the test of reason—by which is meant unprejudiced examination of the alleged grounds of action in all the states of the world. To-day when the nations are so dependent one upon the other, and when all recognize the importance of insisting upon the respect for the law of nations, states will be quicker to intervene in vindication of their law than formerly they were. The motive-spring of this salutary action will ever remain enlightened public opinion in each state. As long as public opinion has this directing influence, the citizen himself must assume his part of the responsibility for the faithful observance of international law. To meet this responsibility fully he must be ready to commend his government for its just action, to condemn it for its violations of international law, and to lend his support for the adoption of a policy of enlightened self-interest which neither sacrifices essential interests to quixotic and ill-balanced impulses, nor yet is unmindful of the common interest of all the states to maintain peace and to preserve the health and rightful independence of each of the states separately; so that all humanity may continue uninterruptedly its march toward the goal anticipated by the poet:

*Till the war-drum throb'd no longer, and the battle-flags  
were furl'd*

*In the Parliament of man, the Federation of the world.*

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*There the common sense of most shall hold a fretful realm  
in awe,*

*And the kindly earth shall slumber, lapt in universal law.*

**BIBLIOGRAPHY  
OF  
INTERVENTION**



## BIBLIOGRAPHY OF INTERVENTION

The following list of books and articles relative to intervention is arranged alphabetically, substantially in accordance with the pattern of the cards printed by the Library of Congress. The indication of the classification or "book numbers" will make it possible for students using libraries which employ this system to obtain the book desired with the least effort, and by noting the card number on the left hand side, they may purchase separate cards for each item, from the Library of Congress.

References to the principal bibliographies on intervention will be found in a foot note, but none of these, so far as I am aware, is extensive or critical.<sup>1</sup>

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<sup>1</sup>The following works contain bibliographies or bibliographical notes: Berner in Bluntschli's *Staatswörterbuch*, 1860, Vol. V, p. 354. Has some valuable comments.

Bernard, 1860; *Non-Intervention*, p. 10 note.

Hodges, H. F.; *Intervention*, p. 263-71. Incomplete and not important.

Geffcken, in *Hollzendorff's Handbuch*, Vol. IV, p. 131.

Kraus, H.: *Die Monroedoktrin*, p. 369 note (1) has references on intervention. Kraus gives other bibliographical notes of value.

Library of Congress typewritten list on Intervention. This is the most complete list which has appeared to date, but it lacks a number of important works not yet to be found in the Library of Congress collection, and it makes no comment upon the merits of the respective works.

Library of Congress has also printed Bibliographies containing lists on Mediation, Balance of Power, etc.

Oppenheim, L.: *International Law*. Second Edition, Vol. I, p. 188, 3d ed., Vol. I, p. 221.

Rivier, A.: *Droit des Gens*, Vol. I, 389-404.

Rotteck, H. von: *Recht des Einmischung*, 1845, p. 7-8, note. One of the best bibliographies.

It has seemed, therefore, desirable to add a few words of comment upon the character and merits of the principal works. These superficial indications are by-products of my investigations, jotted down at different times in a sketchy, fragmentary manner, without any uniformity of treatment, and they are submitted for what they may be worth. No claim is made that they represent the compiler's final judgment upon the respective merits of the works discussed.

It is to be hoped that other investigators will reform them, or submit suggestions and comments, in the event of the publication of a later edition.

A system of stars has been used to indicate the relative merits of the more important works. Four stars indicate those that are considered to be the most meritorious.

Under certain of the incidents of intervention included in the list will be found a few of the books and articles which discuss the facts and the justification for the action taken. It did not, however, seem desirable to confuse a bibliography devoted to the principles of intervention with a large number of works devoted almost exclusively to a consideration of diplomatic incidents and discussions.

Except when the contrary is stated, I have tried to examine each item of this bibliography with such care as its importance appeared to justify. In the case of works which are not in the Library of Congress, I have indicated some other library where they are available, and when I have not discovered them in this country, the European repository has been mentioned.

The trained librarians on the staff of the Library of Congress, The Harvard Law Library, the Library of the Carnegie Endowment for Peace, The New York Bar Association, Columbia Law School, and the New

York Public Library have been generous with their assistance. In addition to the libraries above mentioned I have examined the card catalogues of the following: State Department; The University of Pennsylvania; The Pennsylvania Historical Society, The Library Company of Pennsylvania, Princeton University, Yale University, Boston Athenaeum.

Without the spirit of coöperation and assistance which Mr. Herbert Putnam has inspired in every department of the Library of Congress, this bibliography could not have been made so complete, and to him I wish particularly to express my appreciation.

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[**Aldebert,**]

De l'intervention [Dissertation, Paris]

*Paris, V. Giard and E. Brière, 1902, ii+152p.*

This work is cited by Jean Lagorgette: *Le Rôle de la Guerre*, p. 230, and appears to relate to public law, but when I obtained a copy from abroad I found it related solely to intervention in private law.

\*\*\***Amos, Sheldon, 1835-1887.** [Barrister-at-Law; late Professor of Jurisprudence in University College, London.]

Political and Legal Remedies for War.

*London, 1880, ii+364 p., 23 cm.*

10-16358

JX1948.A6

[A New York edition of the same date by Harper and Bros. is smaller in size and type, and inferior in general makeup. The indexing of the material is the same in both.]

One of the very few serious studies of the problem of the restriction of the unnecessary use of force. It is original, judicious in treatment, suggestive, and in the main also it is sound.

✦**Angell, James Burrill, 1829-1916.**

The European concert and the Monroe Doctrine.

*A discourse before the Phi beta kappa Society of*



*Harvard University, June 28, 1905. 16 p., 23 cm.*  
[Harvard Law Library]

A14-1083

Valuable because of the broad diplomatic experience of the author and his unprejudiced examination of the question of the European concert and its supremacy, but the treatment is somewhat superficial.

**Annuaire de l'institut de droit international.** See:  
Institut de droit international, Annuaire.

10-16478 Revised

JX24.I4

**Anonymous.**

Legal opinions and observations on the correspondence lately addressed by the acting French consul in Lisbon to the Portuguese Government.  
*London, no date, 50 p., 8°.*

[Harvard Law Library]

**Anonymous.**

Specific answers to the several demands of the acting French consul in Lisbon to the Portuguese Government in his note of March 28, 1831.

*London, no date, 15 p., 8°.*

[Harvard Law Library]

**Anonymous.**

Particulars and corresponding documents relating to the French aggression on Portugal.

*London, no date. 44 p., 8°.*

I have not examined this work.

\*\*\* **Anonymous** [under pseudonym of Stephanus Junius Brutus, accredited to Hubert Languet or Duplessis-Mornay].

Vindiciae contra tyrannos [Grounds of Rights against Tyrants].

1579, and often thereafter. *The Library of Congress has an edition printed at Basle 1589.*

9-10598

JC.143.M3.1589

See W. A. Dunning: *Political Theories, Luther to Montesquieu*, p. 47. Prof. Dunning and Prof. Coker refer to *Encyclopedia Britannica* "Lanquet" and Janet: *Histoire de la science politique*, Vol. II, p. 31, note 2. They used the edition of 1595, bound with Machiavelli's *Prince*. Esmein, who uses an edition of 1600, says (in *Nouvelle revue historique de droit français et étranger*, 1900, p. 557), "It is one of the most original and powerful of the writings about religion (doctrine) and political controversy of that fecund period." F. W. Coker (*Readings in Political Philosophy*, New York, 1914, p. 207-221) has translated a portion, and Esmein gives French translations of other portions of the four questions considered. The fourth is: "Whether it is the right and duty of princes to interfere in behalf of neighboring peoples who are oppressed on account of adherence to the true religion, or by any obvious tyranny." Prof. Dunning *Political Theories* (p. 55) says: "The answer is affirmative on both branches of the question, and the ground is, in the one case, unity of the Christian Church; in the other, the unity of humanity, involving respectively, duty to God and duty to one's neighbor." This latter Prof. Dunning remarks strongly presents "an enlightened view of international solidarity."

### Anonymous.

De justa reipublicae Christianae in reges impios et haereticos autoritate justissima que catholicorum ad Henricum Navarraeum et quemcunque haereticum a regno Gallico repellendum confederatione.

*Paris, Guillaume Bichon, 1590.*

Esmein (in *Nouvelle revue historique de droit français et étranger*, 1900, p. 553) calls this "a curious little book inspired by a fierce passion and sometimes expressing the highest ideals." He says it supplied the Leaguers with arguments to justify war against the French Protestants (Calvinists) and the calling in of foreign aid on the ground that the Protestants were not French, and that it was a duty of other nations to repel them.

**Anonymous** [See: **Kamptz, Karl C. A. H. von**].

Völkerrechtliche Erörterung des Recht der Europäischen Mächte in die Verfassung eines einzelnen Staats sich zu mischen.

*Berlin, 1821, xvi+214 p., 8°.*

[Harvard Law Library and  
Yale University Library]

**+Anonymous.** By "R. Q."

A review of the preceding work by Kamptz.  
in *Hermes*, 1821, Vol. XI, p. 142-156.

Contains an important discussion of intervention and severely criticizes Kamptz's work.

**Anonymous.** By "M. M. D. et R."

Traité sur le droit d'intervention.

*Paris, 1823.*

Cited by Rotteck (*Einmischung*, 1845, p. 8); in  
Bluntschli's *Staatswörterbuch*, 1860, Vol. V, p.  
354; Also Heffter, § 44, note.

I was unable to consult this work.

**Anonymous.** By "Decimus."

Intervention and its fruits; a letter to Her  
Majesty's Secretary of State for Foreign Affairs.  
*London, Saunders and Otley, 1841, 32 p.*

[New York Library]

Interestingly written attack upon Palmerston's policy regard-  
ing Turkey. The author advises England to hold aloof and let  
Russia occupy the Dardanelles, and France occupy Egypt. Defends  
policy of complete non-intervention.

**Anonymous.**

An Appeal, on behalf of the British subjects  
residing in and connected with the river Plate,  
against any further violent interventions by the

British and French Governments in the affairs  
of that country.

*London, 1846. 8°.*

[Hague Peace Palace]

I was unable to consult this work.

**+ Anonymous.**

Non-Intervention, A Humbug.

in *Spectator of July 3, 1847, and reprinted in  
Living Age, 1847, vol. 14, p. 284-286.*

Points out how frequently intervention occurs, and declares  
it is often a duty. Thinks no guiding rule is possible.

**Anonymous.**

Intervention anglo-française dans le Rio de la  
Plata. Missions de MM. de Deffaudis et  
Walewski.

*Paris, 1848. 8°.*

[British Museum, 8175.e.]

I was unable to consult this work.

**Anonymous.**

Intervenção estrangeira, ou documentos his-  
toricos sobre a intervenção armada de Franca,  
Hespanha e Inglaterra nos negocios internos de  
Portugal no anno de 1847. Vol. 1.

*Porto, 1848. 8°.*

[British Museum, 8042. aaa.25]

I was unable to consult this work.

**Anonymous.**

Intervention française dans les affaires d'Italie  
en 1859.

*Paris, 1859. 86 p.*

[New York Library,

British Museum, 8032.h]

Political pamphlet: reasons why France undertook war  
(p. 77); results of the war (p. 73). Does not discuss principles  
of intervention.

**Anonymous.**

Le principe de non-intervention.

*Paris, 1860. 16 p., 8°.*

[Boston Athenaeum Library]

Relates to Russian intervention in Bessarabia. This article is of no juridical value.

**Anonymous.** [Harcourt's letters in the *Times*, 1863, were signed "**Historicus**."] See under **Harcourt**.

**Anonymous.**

Intervention: A Duty or a Crime.

*London, 1864. 8°.*

[British Museum, 8092. aaa]

I was unable to consult this work.

**[Anonymous.]**

L'intervention militaire anglaise sur le continent.

*Paris and Nancy, Chapelot, 1912. 27 p., 8°.*

[Listed in Berlin Cards, B.12.1819]

This pamphlet does not relate to intervention, but discusses the military coöperation of England and France in the event of a war with Germany.

**Anonymous.**

Our Policy in Nicaragua, by "A Friend of Justice."

in *North American Review*, January, 1913, vol. 197, p. 50-61.

AP2.N7 v. 197

Condemns interference of United States in the civil conflict in Nicaragua. Does not discuss the principles of intervention.

**Anonymous.**

Intervention. Non-Intervention—theory and practice. The true tradition.  
in *London Times*, May 17, 1919.

An argument justifying intervention in Russia against Bolsheviks and pointing out that Great Britain has not observed the doctrine of non-intervention. Refers particularly to the view expressed by George III.

+++Arntz, E. R. N. [Professor of Law, University of Brussels.]

The views of Prof. Arntz in regard to restrictions to be applied to intervention, especially humanitarian intervention, are quoted by Rolin-Jaequemyns  
in *Revue du droit international et de la législation comparée*, 1876, vol. 8. p. 675.

1-7465

JX3.R4 Vol. 8

Professor Arntz would restrict such intervention to collective action of the powers. In his "Programme du cours de droit des gens fait à l'Université de Bruxelles," (1882), Arntz discusses intervention (p. 69-84). After stating that non-intervention in internal affairs is the rule (p. 75), he gives three exceptions: (1) treaty stipulation; (2) when the institutions are a menace; (3) on the ground of humanity, but he would limit the latter to collective action (p. 77-8).

Rougier (*Rev. Gen.* Vol. 17, p. 473) refers to this passage and states that Professor Arntz was the first to establish the theory of intervention on the ground of humanity, but Arntz himself refers to Woolsey as having previously set forth his views (*Programme du cours de Droit des Gens* 1882, p. 78), and the latter (Woolsey: *International Law* 1860, p. 111-12) quotes from Wheaton's *Elements*, part II, Chap. 1, § 10 Fedozzi (*archivio giuridico*, Vol. 62, 1899, p. 518) says Arntz was the first to attempt to find a juridical basis for intervention. This ignores H. von Rotteck's work published in 1845. Arntz also refers to Hall as holding similar views.

**Balance of Power.**

A valuable list of works on the Balance of Power will be found in the Library of Congress: List of References on (p. 49-57)

Europe and International Politics, 1914. L. C. card, 14-30010 compiled under the direction of Hermann H. B. Moyer.

A few of the more important works dealing with this particular purpose are:

*Donnandieu, Léonce: Essai sur la théorie de l'équilibre. Paris, 1900.*

9-3782

JX1318.D7

*Dupuis, Charles, 1863: Le principe d'équilibre. Paris, 1909.*

9-27064

D217.D8

### **Baldwin, Simeon E.**

The limits of active intervention by a state to secure the fulfilment of a contract in favor of its own citizens entered into by them with other states.

*in 28th Report of the International Law Association, London, 1908, p. 180f.*

Justifies interposition and advocates obligatory arbitration as a substitute.

### **Barrillon, François Guillaume.**

Politique de la France et de l'humanité dans le conflit Américain.

*Paris, 1861. 40 p., 25 cm.*

8-10496

E469.B27

On the basis of humanity, the author advises France to take the initiative of an armed and collective intervention based, first, upon the abolition of slavery and second, upon the independence of the Confederate States. The article has no scientific value.

### **Bartholet.**

Du droit d'intervention.

1873.

I was unable to consult this work. It is cited by Geffcken (Heffter's 7 ed.), § 44, p. 107.

**Becherowsky.**

L'intervention et la péninsule balkanique, 1892.

I was unable to consult this work. It is cited by R. Robin: *Occupations*, p. 281.

**Benton, Elbert Jay. 1871—**

International Law and Diplomacy of the Spanish-American War.

*Baltimore, The Johns Hopkins Press, 1908. 300 p., 20½ cm. (The Albert Shaw lectures on diplomatic history, 1907.)*

8-9495

E723.B47

Discusses the various grounds upon which intervention in Cuba was justified and gives a few references to the views of some of the authorities (p. 81-108). The question is examined in a broad and fair spirit, but the treatment is superficial and indicates a lack of comprehension of the principles of international law. The historical side of the question is carefully covered.

++++**Bernard, Mountague, 1820-1882. [Chichele Professor of International Law and Diplomacy, Oxford.]**

On the Principle of Non-Intervention. A lecture delivered in the hall of All Soul's College.

*Oxford and London, J. H. and J. Parker, 1860. Pamphlet, 1+36 p., 23 cm.*

10-17439†

JX4478.B5

Prof. Bernard argues that intervention in internal affairs is contrary to international law. The argument is more philosophical than legal, and is confined to a consideration of intermeddling in the internal affairs of another state. Interposition and counter-intervention are not discussed. Also discusses supervision over smaller states. Bernard counsels absolute nonintervention. It is one of the ablest works on the subject, and has exercised a very great influence on other writers and through them on the theory of international law and the conduct of international relations. Harcourt [Historicus] seems to have been influenced and later Hall, Lawrence, and Oppenheim. Bernard was one of few English writers who appear to have been familiar with the German authorities, and the only one who had given the subject of intervention serious consideration. He gives a bibliography of intervention (p. 11).



++++**Berner**

Intervention [article on]  
in *Deutsches Staats-Wörterbuch of Bluntschli, and Brater, Stuttgart and Leipsig, 1860. Vol. V., p. 341-354.*

One of the best discussions of intervention. Berner recognizes the general principle of nonintervention, but admits reasonable exceptions: balance of power; continued acts of inhumanity ("In final analysis, Man is the highest right before which all other right must incline."); counter-claim [counter-intervention]; necessity. He appends a valuable bibliography, which we have utilized.

**Berra, F. A.**

Teorici de las intervenciones.  
in *Neuva Revista de Buenos-Ayres. Vol V., p. 397-465.*

I was unable to consult this work.

\***Bignon, Louis Pierre Edouard, baron, 1771-1841.**

Les cabinets et les peuples, depuis 1815 jusqu'à la fin de 1822; par M. Bignon.  
*2d ed. (revised and corrected), Paris. Béchét aîné, 1823.*

18-5011

D383.B5

A well-written contemporaneous attack upon the arrogant pretensions of the Holy Alliance to interference in the internal affairs of other states. Discusses intervention policy of the powers toward Italy, Greece, and Spain. Very anglophobe (p. 382); criticizes England for merely proclaiming the doctrine of non-interference, and not trying to protect the states against interference. H. v. Rotteck (*Einmischung*, p. 26) cites this work with high praise.

\***Birkbeck, W., Lt.**

The principle of Non-Intervention.  
*No date or place of publication indicated. 4 p., 8°.*  
[in New York Public Library]

Birkbeck in these four pages shows that he has carefully considered part of the subject. He emphasizes the need of definition

of the terms employed (p. 4), and prefers those in Abdy's Kant. Strongly defends the right of intervention to defend the law, even when national interests are not immediately concerned.

+++ **Bluntschli, Johann Kaspar, 1808-1881.**

French translation entitled, *Le droit international codifié*, by M. C. Lardy, from the German edition of 1868.

*Paris, 1870 and 1895.*

10-16547†

JX1268.B451895

Louis Renault, in his Introduction to the Study of International Law, says it is one of the few books which must always be consulted. This statement I have found to be particularly true for intervention. See: Violations of international law and the means to prevent them, §§ 462-500, p. 247-269. I have also used the German original.

**Bodin, Jean, 1530-1596.**

Les six livres de la republique de I. Bodin Angeuin. Ensemble une apologie de René Herpin.

*Paris, I du Puis, 1583, 1060 p., 18 cm. First pub. 1576, Latin edition De republica Libri Sex, 1586.*

7-14983

See W. A. Dunning: Political Theories, Vol. I, 1910, p. 86. Bodin admitted the right of a foreign sovereign to intervene upon humanitarian grounds. See criticisms of this doctrine by Werdenhagen (below under Werdenhagen).

\* **Bompard, Raoul.**

Le Pape et le droit des gens.

*Paris, H. Rousseau, 1888, 228 p., 8°.*

[Harvard Law Library]

Discusses intervention and the interest and rights of European states in the affairs of the Papal states (p. 109-127); gives an account of the various interventions, from 1796-1870, which have concerned the Papal states (p. 127-184). This work is important because the opinions expressed about intervention are based upon study of documents and the practice of states, even though the position of the Pope is exceptional.

**Borchard, Edwin M.**

The Diplomatic Protection of Citizens Abroad,  
or the Law of International Claims.

*New York, 1915. xxxvii+988 p., 24½ cm.*

15-1459 B, Revised

JX4231.P8.B6

The best work on interposition for the redress of wrongs to  
nationals—a veritable mine of information.

**Bourgeois, J.**

Le principe de non-intervention à propos d'un  
livre récent.

in *Revue général de droit internationale*, 1897,  
*Vol. IV*, p. 746-757.

JX.3.R56.vol.4

This is really a review of a book on the French Revolution.

**Brewster, Benjamin Harris.**

Paper furnished by the Attorney-General, in  
1883, upon the subject of intervention and also  
upon the subject of the Monroe Doctrine.

*Washington, Government Printing Office, 1884.*  
8 p., 8°.

[New York Public Library]

This is not important.

**Bringolf, Hans.**

Völkerrechtliche verträge als quelle von inter-  
ventionen bei internationalen verwickelungen.

[Inaugural dissertation, Griefswald University.]

*Griefswald, J. Abel, 1899, 1+47 p., 8°.*

1-G-419

JX4481.B7

**British State Papers.**

1-4026

JX103.A3

The principal collection of British source material: treaties  
and diplomatic correspondence with all other states.

**Brocher de la Fléchère.**

Solidarité et souveraineté.

in *Revue de droit international et de législation comparée*, 1894, vol. 26, p. 415f.

JX.3.R4.vol.26

Not important. It is a discussion of an anonymous book on "L'intervention et la péninsule balkanique." The latter is based upon the nationalistic ideas of Carnazza-Amari. The article criticizes them and considers intervention in Turkey necessary because Turkey failed to live up to her obligations and endangered the peace of Europe. Quotes Guizot: "No state has the right to intervene except when its own safety makes it unavoidable."

**Callahan, James Morton, 1864—**

Cuba and International Relations.

1899.

99-3745, Revised.

F1783.C215

See below under Cuba, 1868-1878.

**Calvo, Charles, 1824-1906.**

Le droit international.

2 ed. (1st French edition), 1870; 4th ed., 5 vols., 1887-88; a supplementary volume, 1896.

10-15585

JX2984.D5 1896

Intervention is discussed in vol. I, livre III, §§ 107 ff., p. 264. Calvo discusses intervention and especially the interventions against Argentina and Mexico. Superficial and prejudiced and not always reliable, as Calvo is, he has nevertheless exercised a considerable influence. This may be in part due to the easily read French which he has chosen as his medium and the fact of his being a South American diplomatist. He was, I believe, the first to publish in French a complete treatise upon International Law supported by a comprehensive discussion of the incidents. The interest of the work is enhanced by means of carefully chosen and well connected extracts. Unfortunately, Calvo does not give specific references, but supplies bibliographies in a footnote at the end of each section. These references show the industry and wide reading of the author, and facilitate the researches of others. I have found one or two valuable references. The student of the principles of Intervention need expect little assistance from Calvo.

**Carnazza Amari, Giuseppe, 1837—**

Nouvel exposé du principe de non-intervention.  
in *Revue du droit international et de législation comparée*, 1873, Vol. V, p. 352-389, 531-565. (Book printed with same title in Italian, 1873.)

JX.3.R4,V.5

Good statement of the views of the Italian nationalistic school. Denies legality of intervention for balance of power, and for humanity, but approves when it is to help national independence [self-determination], or when undertaken against intervention itself [counter-intervention].

**Carnazza Amari, Giuseppe, 1837—**

Nuova esposizione del principio del non intervento. Discorso inaugurale pronunciato dal professore G. Carnazza Amari per l'apertura degli studi della Regia università di Catania; anno 1872-1873.

*Catania, Stabilimento tipografico Caronda, 1873, 124 p., 22½ cm.*

11-12683

JX4481.C3

See French edition (preceding item) for criticism and notes.

**Carnazza Amari, Giuseppe, 1837—**

Traité de droit internationale public. [Translation from Italian.]

*Paris, 1880.*

11-34126

JX2858.T4

Vol. I, ch. VI, "Du principe de non-intervention," p. 495-605, expresses the ideas previously published in his "Nuova esposizione del principio del non intervento."

**Cass, Lewis.**

Non-Intervention.

*Reprint of speech in the Senate, Feb. 10, 1852. 16 p., 8°.*

[Boston Public Library]

Apropos of the situation in Hungary. Justifies intervention and discusses the consequences and principles of a diplomatic protest against the action of another state.

## \*Cavagliere, Arrigo.

L'intervento, nella sua definizione giuridica;  
saggio di diritto internazionale.

*Bologna, L. Beltrami, 1913. 164 p., 24½ cm.*

14-17732

JX4481.C4

After Cavagliere has discussed the various theories in regard to the juridical basis of intervention he expresses his opinion against the legality of intervention when undertaken by a single state (p. 46-60).

When, however, the particular interests of the individual state are of vital importance, Cavagliere thinks the right to defend them on the ground of necessity rests upon a juridical basis and permits, by way of exception, the disregard of the subjective rights of the other state (p. 47-8). For the protection of lesser interests this authority considers that retorsions may be employed (p. 49). But he recognized the right of the collectivity of states to intervene for the protection of the interests of all the states. The remainder of the study (p. 60-164) is a discussion of collective intervention.

## Cimbali, Eduardo, 1862—

Il non-intervento; studio di diritto internazionale universale.

*Rome, 1889. 275 p., 8°.*

[Harvard Law Library  
Columbia Law Library]

Follows extreme views of Italian nationalistic school. Defends right to intervene to free an oppressed nation (p. 89). This he thinks is not intervention, because he defines intervention as just such an oppression of a people of another race. After discussing intervention, non-intervention, and the two together, Cimbali takes up the alleged exceptions which justify intervention (p. 125-255) and concludes that there is not one case in which intervention is justified and that it ought always to be condemned (p. 261). He states this view as follows: "Il non-intervento, dunque, che costituisce la più perfetta e scrupolosa quarentegia della indipendenza nazionale dei popoli è un diritto assoluto inviolabile" (p. 262).

**\*\*Clark, Joshua Reuben, Jr.**

Right to protect citizens in foreign countries by landing forces. Memorandum by the Solicitor for Department of State.

[*Washington, Govt. Printing Office, 1912?*]  
70 p., 23½ cm.

13-35233

JX4175.U6

The appendix contains a chronological list of occasions on which the Government of the United States has taken action by force for the protection of American interests, including certain instances in which similar action has been taken by other governments in behalf of their nationals.

Discussion of grounds of intervention. The Solicitor finds that the views of the authorities and the practice of states justify, as in accord with the principles of international law, the use of force in foreign territory when necessary to the protection of the lives and property of citizens. Since, he argues, international law is *ipso facto* a part of our law, this authorizes the executive to use force for this purpose. The study is also one of the most complete relative to the views of the authorities as to grounds of intervention in international law. It is one of the most important studies of intervention.

**\*Cobbett, Pitt.**

Cases and Opinions on International Law.  
*London, 1909, vol. I, Peace; 1913, vol. II, War and Neutrality. 2 vols., 22½ cm.*

10-20525 Revised

JX68.C72

Contains illuminating notes to the accounts of the incidents which make this work equally valuable as a commentary or as a collection of cases. The analysis of every question upon which this keen writer touches is worthy of attention.

**\*\*Condorcet, Marie Jean Antoine Nicholas Caritat,  
Marquis de**

Drafted the Statement of Motives adopted by the French Assembly, September 22, 1792.

*Annual Register, 1792, vol. 34, State Papers, p. 263-272.*

17979-3

D2.A7

In this Statement of Motives, the Assembly justifies its treatment of Louis XVI, and blames Austria and Prussia for violations of international law in allowing the emigrants to make hostile preparations within their territory (p. 264). They also blamed Austria for violating the treaty of alliance, and signing a contradictory treaty with Prussia in an attempt to separate the king from the French people and to war upon the latter. "Never," the statement declares, "did hostilities more really justify war, and to declare it was to repel it" (p. 265). Lingelbach (*Intervention in Europe*, p. 11) says: "This document formulates the principle of non-intervention [non-interference] on political grounds, and stands in strong contrast to the practice of Europe during this period."

### **Conrotte, Manuel.**

La intervención de España en la independencia de los Estados Unidos de la América del Norte.

*Madrid, v. Suárez, 1920. 2986 p., 23½ cm.*

20-22891

E249.C73

I have not examined this book.

### **Constant de Rebecque, Henri Benjamin, 1767-1830.**

[Benjamin Constant.]

L'esprit de conquête.

*Paris, 1813. Reedited with a preface by Albert Thomas, Paris, Libraire Grasset, 61 rue des Saint-Pères, 1918, 62 p., 17½ cm.*

20-1196

JC381.C72

### **Cox, Isaac Joslin.**

American Intervention in Florida.

in *American Historical Review, January, 1912, p. 290-311.*

This article is historical and does not enter into consideration of legal principles.



**Cox, Isaac Joslin.**

**The Mexican Problem: Self-Help or Intervention.**

*in Political Science Quarterly. June, 1921. vol. 36.  
p. 226.*

Does not discuss principles of intervention.

**Crawford, Price W. H.**

**The intervention of Bulgaria and the Central Macedonian Question.**

*London, 1915.*

[in Naval War College Library]

Does not discuss or concern the principles of intervention.

5-26243

JX2514.F5

++++ **Creasy, Sir Edward Shepard, 1812-1878.**

**First Platform of International Law.**

*London, 1876, XV+710 p., 23 cm.*

Chapter IX (p. 278-350), deals mainly with interposition, intervention, and interference. Creasy, in his discussion of these questions, is broad of view, and shows a thorough study of the authorities, but he is not so sure nor so profound as Westlake. Nevertheless, his study is illuminating and one of the best in English.

**Cuba, 1851-1854.**

The diplomatic correspondence between the United States and Great Britain and France is of great importance from a juridical point of view. It relates to conquest, counter-intervention, international police, international cooperation, self-help, collective intervention, and the Monroe Doctrine. See also Soulé Pierre. Many important documents will be found in Moore's Digest, Vol. VI, § 906, p. 56-60.

**Cuban Insurrection, 1868-1878.**

The Diplomatic Correspondence of the United States is important as relating to humanitarian intervention. See Moore's Digest, Vol. VI, § 907, p. 61-105.

Callahan, James M.: Cuba and International relations, 1899 [is mainly devoted to the diplomatic history of the insurrection]

## BIBLIOGRAPHY

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of 1868-78. Chap. XIII is entitled: "Ten years war—steps toward intervention," p. 412-52, but does not discuss the principles and the right of humanitarian intervention. The same is true of Chap. XIV relative to intervention in 1898.]

99-3745 Revised

F1783.C215

*Latane, John H.*: Intervention of the United States in Cuba in *North American Review*, March, 1898, p. 350-61 [This article relates entirely to the insurrection of 1868-78, gives an account of Secretary Fish's threat of intervention on the ground of humanity and protracted struggle and relates how he attempted to secure coöperation of Great Britain without success. This negotiation was kept secret 20 years till published as a Congressional document.]

See also *Curtis, George Tichenor*: The case of the *Virginian* considered with reference to the law of defense, 1874. [This was an incident of the insurrection.]

11-25163

F1785.C99

The Library of Congress lists, *Butler, B. F.*: Speech in the House of Representatives, June 15, 1870.

9-28807

F1785.B98

## Cuban Insurrection, 1895-1898.

One of the most important instances of humanitarian intervention. The intervention of the United States has been unjustly criticized by many writers or inaccurately justified upon the ground of removal of a nuisance. See discussion in text under § 8.

For diplomatic correspondence, see Moore's Digest, Vol. VI, § 908, 909, p. 105-236. See also under *Benton*; *Falck, H. E.*; *Fedossé*; *Hershey*; *Hengstler*; *Institute de Droit International*; *Phelps*; *Le Fur*; *Phelps*; *Quesada*; *Woolsey, T. S.*

*Barrows, Samuel June*: Intervention for Peace, Freedom, and Humanity, Speech in House of Representatives, April 28, 1898, 13 p. 8°.

1-4892.

*Becarra, Ricardo*: Cuestion palpitante; un poco de historia a propósito de la independencia de Cuba y Puerto Rico, y la doctrina Monroe y la intervención norteamericana en Cuba.... Caracas, 1898.

9-21914

F1786.B38

*Butler, Charles Henry*: Intervention the proper course.

12-5427

E721.B98

31

*Denby, Charles*: The doctrine of intervention (in *The Forum*, Vol. XXVI, p. 385-92) [merely advocates protection of American interests and prophesies annexation of Cuba—of no scientific value].

*Desjardins, Arthur*: L'insurrection Cubane et le droit des gens in *Revue de Paris* July 15, 1896, Vol. 4, p. 347-383 condemns the action of the United States as a violator of international law and thinks the purpose is to secure the annexation of Cuba.

*Guétras, John*: The United States and Cuba; a review of documents relating to the intervention of the United States in the affairs of Spanish-American colonies, *Philadelphia*, 1895, 18 p.  
6-27946 F1786.G97

*Robinson, Albert Gardner*: Cuba and the intervention, *New York*, 1905, 359 p.  
5-7752 F1786.R66

*Washburn, William Drew, Jr.*: Cuba and Spain. Our plain duty. *Minneapolis*, 1898, 8 p.  
[in Boston Public Library]

✦ **Curtis, George Ticknor, 1812-1894.**

The case of the *Virginus* considered with reference to the law of self-defense.

*New York*, 1874, 40 p., 23½ cm.

11-25163

F1785.C99

Important because this was one of the first works to recognize the principles of self-help involved in the *Virginus* controversy.

✦ **Curtis, Roy Emerson**

The Law of Hostile Expeditions.  
in *American Journal of International Law*, 1912,  
vol. 8, p. 1-37, 224-255.

A scholarly examination of this phase of what we have called self-help, with references to the precedents in American diplomatic history.

[**Davenant, Charles.**] 1656-1714.

Essays upon: I. The balance of power. II. The right of making war, peace, and alliances. III.

Universal monarchy. To which is added an appendix containing the records referred to in the second essay.

*London, 1701.*

7-10865

H33.D25 [vol. 4]

**Decimus** [pseudonym],

Intervention and its fruits; a letter addressed to Her Majesty's Secretary of State for Foreign Affairs.

*London, Saunders and Otley, 1841. 32 p.*

[New York Public Library]

Decimus's interestingly written attack upon Palmerston's policy regarding Turkey advises the government to hold aloof and let Russia occupy Dardenelles and France, Egypt. Defends policy of complete non-intervention.

\*\*\* **Dickinson, Edwin De Witt, 1887—**

The Equality of States in International Law.  
*Cambridge, Harvard University Press, 1920.*  
*xiii+424 p., 23 cm.*

21-99

JX4003.D5

**Dickinson, Goldsworthy Lowes.**

Causes of International War.

*London, The Swarthmore Press, Ltd.; New York, Harcourt, Brace and Howe, 1920. 110 p., 18½ cm.*

20-22614

JX1952.D53

I have not consulted this book.

**Diplomatic Correspondence of the United States. See Foreign Relations.**

**Doane, George Washington, bp., 1799-1859.**

Influence, without Intervention; the Duty of our Nation to the World: the oration, at Burling-

~~SECRET~~

2017-2018

**20-9018**

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**INDEX**

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~~CONFIDENTIAL~~

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DATE 08-22-2001 BY 60322 UCBAW

**James Arthur Wallace**

1. 1941 1942 1943 1944 1945 1946 1947 1948 1949 1950 1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349



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1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

2. The second step is to gather relevant information and data. This can involve research, consultation with experts, or collecting data from various sources.

3. The third step is to analyze the information and data collected. This involves identifying patterns, trends, and relationships that can help in understanding the problem.

4. The fourth step is to develop a solution or answer. This involves applying the knowledge and skills gained from the previous steps to create a response that addresses the problem.

5. The fifth step is to evaluate the solution or answer. This involves checking the results against the original problem and requirements to ensure that the solution is effective and accurate.

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22-1

~~A PERSONAL COPY OF THE REPORT IS BEING FORWARDED TO THE DIRECTOR OF THE FBI AND THE ATTORNEY GENERAL.~~

**Elmore, Alberto A.**

Ensayo sobre la doctrina de la intervencion internacional.

*Lima, Impr. de "El Comercio," 1896. 52 p., 20½ cm.*

16-11357

JX4481.E4

**Engelhardt, E.**

Le droit d'intervention et la Turquie.  
in *Revue de droit international et de législation comparée*, 1880, vol. 12, p. 363-388. Reprinted  
*Paris, 1880, 64 p., 8°.*

10-31105

JX3.R.56 Vol. 12

[Reprint in Harvard Law Library]

Engelhardt recognizes the right to intervene to abolish the slave trade (p. 10). Restrictions upon sovereignty (p. 11). Studies the nature of the various interventions in Turkey, especially since 1856 (p. 13f), and concludes (p. 61) that Turkey is under the guardianship of the principal European powers. "C'est à dire qu'elle est en tutelle [Depêche du duc Decazes du 10 Janvier, 1876] et que la surveillance journalière dont elle est l'objêt dans ses affaires interieures a réduit à peu près à néant son autorité souveraine." [Dèpêches de Lord Derby du 14 Juillet et du 27 Septembre.]

**\*Esmein, Adhémar, 1848—**

La theorie de l'intervention international chez quelques publicistes francais du XVIe siècle.

in *Nouvelle revue historique, de droit francais et étranger*, vol. 24, p. 549-574.

[New York Public Library,  
Harvard Law Library]

**Falck, Horace Edgar, 1879—**

Diplomatic Relations Preceding the War of 1898.

in *Johns Hopkins University Studies in History and Political Science, Series XXIV, Nos. 1-2, 1906.*  
95 p.

6-10943

H31.56 Vol. 24

This is really a study of American intervention in Cuba. It first sets forth views of authorities—some of the most weighty being omitted—then analyzes the various grounds upon which intervention in Cuba was justified: destruction of the *Maine*; injury to commerce; self-preservation; protection of property and lives of American citizens in Cuba; humanity; and reaches the conclusion that the circumstances did not justify intervention on any of these grounds.

**\*\*Falcke, Horst P.**

Le blocus pacifique.....authorized translation  
of German by Ant. Contat,  
*Leipzig, 1919, Rossbergsche Verlagsbuch hand-  
lung [1st German edition, 1891.]*

A19-1536

[Not in Library of Congress.  
In Carnegie Endowment Library]

Is a work of first importance, as the author gives carefully prepared accounts of many important incidents.

**\*\*Fedozzi, Prospero, 1872—**

Saggio sul intervento.

*Separately bound extract from, Archivio giuridico, 1899, Vol. 62, New Series, Vol. 3, p. 3-46; 247-280.*

[In Library of Congress, Law Periodicals]

Divides his study into two parts: (I) the psychological and philosophical bases of intervention; and (II) the juridical foundations for intervention. He considers that nations fight for ideas, and that by intervention they extend the beliefs they cherish. As examples, he discusses the propaganda of the Revolution. The Cuban intervention, he considers was for the United States a matter of civilization and not economics. In Part II, he analyzes the classes of instances of intervention and the judicial nature of each category. He gives an interesting explanation

of the errors into which the nationalist school of Italy has fallen, particularly Carnazza Amari. The study shows much research, acumen, and fairness, and is clearly expressed, but the author appears to ignore some of the most important works, especially those in English and German.

**Fiévée, J.**

De l'Espagne, et des conséquences de l'intervention armée.

3 ed., Paris, 1823, 8°.

[Peace Palace Library]

I was unable to consult this work.

**+Flöckher, Adolph von, 1867—**

Les conséquences de l'intervention.

in *Revue générale de droit internationale public*, 1896, vol. 3, p. 329-333.

10-31105

JX3.B56, Vol. 3

Explains (p. 329-331) that force is the means of carrying out an intervention and distinguishes between the justice of an intervention and the means to carry it out. Refutes the doctrine of Heilborn that there is no need of a just cause of war, and therefore no need of a just cause for intervention. Discusses (p. 332-333) the just limits of the terms of peace. He thinks a state has a right to make war to defend legitimate interests and goes so far as to permit it to make war to secure new advantages indispensable for the development of the State, and thinks "such action is in the nature of a veritable necessity" (p. 333). Notwithstanding the injustice of an abuse of force, the author recognizes that new rights arise from the treaty of peace.

**++Flöckher, Adolph von, 1867—**

De l'intervention en droit international.

Paris, A. Pedone, 1896. 70 p., 25 cm.

9-8182

JX4481.F6

This is a valuable discussion of intervention in which the author brings out certain characteristics of the use of force in international relations, but is not able entirely to free himself from the existing confusion in regard to the use of terms. He defines intervention objectively as a mixing by one government



in the affairs of another for the purpose of imposing its will. Yet further on, Flöckher restricts intervention in cases where force is used for the protection of interests. (Cf. Berner, p. 341.) The book is especially valuable because the author has carefully examined the German authorities, Geffcken, Heilborn, Strauch, and others.

### **Foelix.**

Intervention d'un état dans les affaires interieures d'un autre. [A review of Wheaton's Elements of International Law.]

in *Revue de droit francais et étranger*, 1837, vol. 4, p. 161-179.

[In Harvard Law Library]

Foelix praises Wheaton for including a study of questions previously passed over in silence, and especially the intervention of a state in the internal affairs of another state. This review is not important from a scientific point of view.

### **Foreign Relations of the United States.**

10-3793

JX233.A3

This official publication of the Government continuing the Diplomatic Correspondence 1861-1913 contains selected portions of the correspondence with foreign governments. It is a most valuable source of information, especially in the earlier years when more important material was made public. There is an index volume up to 1899. The Index, prepared by Miss Adelaide Hasse, of a portion of the material prior to the Diplomatic Correspondence (1861) is valuable.

**Frankfurter, Felix**, [Professor of Law, Harvard University].

Haiti and Intervention.

in *The New Republic*, December 15, 1920, p. 71-2.

A well written, brief comment on the intervention of the United States in Haiti, 1915-20. Professor Frankfurter admits the impossibility of absolute non-intervention and advocates making intervention of the United States in other American States subject to the control of a pan-American council.

**+++Fugitive Slaves.**

Report of the Royal Commission on the Surrender of Fugitive Slaves.

*Parliamentary Papers, 1876, vol. 28, [c-1516-I].*

Most valuable for the study of the basic principles of humanitarian intervention.

**++Geffcken, Friedrich Heinrich, 1830-1896.**

Das Recht der Intervention.

*Hamburg, 1887. 50 p., 24 cm.*

Reprint of his article in Holtzendorff's Handbuch, Vol. 4, p. 131-168.

9-3625

JX4481.G4

**Gericke, Josef Lodewijk Hendrik Alfred.**

De jure interventionis ante rerum conversionem in Gallia usurpato. [Inaugural dissertation, Leyden.]

*Lugduni Batavorum, C. C. vander Hoek, 1834. iv.+149 p., 22 cm.*

10-17441†

JX4478.G5

**Gover, John M.**

Notes of Intervention [Interposition].

in *Law Magazine and Review, 1894-1895, vol. 20.*

[in Library of Congress, Law Periodicals]

Not important.

**Greece, 1827**

The intervention of the powers in support of the Greek insurgents was mainly upon the ground of humanity. Of the numerous works we only refer to the following. Almost every writer on international law or European history discusses this incident.

*Phillips, Walter Alison: The War of Greek independence. New York 1897.*

4-1766913

DF.805.P58

++++ **Grotius, Hugo, 1583-1645.**

De jure belli et pacis...accompanied by an abridged translation, by William Whewell.

*London, J. W. Parker, 1853. 3 vols., 22 cm.*

8-36441

JX2093.E5 1853

The original edition published in 1625 will be found in the Harvard Law Library.

\* **Guizot, François Pierre Guillaume, 1787-1874.**

Memoires pour servir à l'histoire de mon temps.  
*Paris, Michel Levy Frères. 1858-67. 8 vols., 21½ cm.*

9-20829

DC255.G8A2

Since Guizot directed the foreign policy of France for a considerable period and was responsible for some of the most inexcusable instances of interference his excuses and reflections are of particular interest, quite apart from Guizot's real merit as a writer.

+++ **Günther, Karl Gottlob**

Europäisches Völkerrecht.

*Altenburg, Richterschen Buchhandlung, Vol. I, 1787, Vol. II, 1792.*

JX2311.E8

This is one of the most scientific and most practical of the text books upon international law, and a proof is the careful consideration of intervention. Günther like Grotius recognizes the obligation to intervene in support of the law (I: 296) and in general emphasizes the superior right of the society of states over the rights of the separate nations (Vol. I, p. 296, 282; Vol. II, p. 289, note (e)). Upon this basis he recognizes the right of transit (Vol. II, p. 224-6) and also the right of action to preserve the balance of power (Vol. I, p. 322, 333, 358, 359, 360, 365). Particularly brilliant is his answer to the objections raised against the balance of power (Vol. I, p. 370-2). To the balance of power he devotes many pages (Vol. I, p. 321-389). In several places he seems to support action upon humanitarian grounds (Vol. II, p. 333, 334, 335, note (g), 286), but he does not justify the use of force for this purpose. Günther repeatedly and emphatically asserts the right of every independent state to settle its govern-

mental and other internal affairs without interference (Vol. I, p. 280, 284-7, 293-4; Vol. II, p. 368-9, 373-9, 395, 400-4, 407-13, 417-18, 436). But he declares: "a due regard for the ties of international fellowship requires that in as far as possible all direct damage to other nations should be avoided and all that constitutes a continuing danger or cause for apprehension removed." (Vol. I, p. 289.) He recognizes the now discarded right to insist upon treaty rights of succession (Vol. II, p. 393) and in general fails fully to perceive the limits of the rights which treaties of guaranty can give (Vol. II, p. 379-8; cf. Vol. I, p. 287-8; Vol. II, p. 381, note (b)). But he sees that interference in a civil strife is only permissible when both sides request it (Vol. I, p. 288, but cf., p. 287).

Günther appears to recognize the executive and directing control of the great states acting for the maintenance of peace and the protection of their common interests (Vol. I, p. 295-6). We should also note his painstaking efforts to establish some limit upon treacherous and abusive military preparations by recognizing a right to demand explanations (Vol. I, p. 289-313).

Günther is rich in bibliographical notes and references to the incidents of practice upon which as a follower of the positive school he builds his system. On the whole it is one of the best studies and deserves to be consulted by all investigators.

+++Hall, William Edward, 1836-1894.

International Law.

*London, 1880. 4 ed. [containing last corrections of the author], London, 1895.*

3-23670

JX2524.T7 1895

§§ 83-95 relate to intervention. The value of Hall's work is too well known to require comment. His is one of the best discussions of the subject in a general text-book, but is not free from inconsistencies, perhaps in part due to national bias and the effort to justify British policy on a basis of juridical principles. He pushes to an extreme the doctrine of necessity, and minimizes the right of humanitarian intervention. I have used the 4 ed. Later editions, even that of A. Pearce Higgins (7 ed., London, 1917), do not amplify the discussion of intervention. Happily Higgins has reverted to Hall's arrangement by sections, which Attlay had abandoned.

\*\*\*Halleck, Henry Wager, 1815-1872.

International Law.

*New York, 1861.*

3-32038

JX2475.16.1861

Intervention is discussed, pp. 81-97, 289-334. Valuable because of the practical and original treatment and full references to authorities. The views expressed sixty years ago are more in accord with present opinion than those of many later writers.

\*\*\*Harcourt, Sir William George Granville Venables Vernon, 1827-1904.

[Published under pseudonym "Historicus".] Letters on some questions of international law. Reprinted from the *Times* with considerable additions.

*London and Cambridge, Macmillan & Co., 1863.*  
*xiii+212 p., 22 cm.*

10-19738

JX4521.H3

Under a pseudonym, Sir Vernon Harcourt, in his well-known letters of "Historicus," reprinted from letters that appeared in the *London Times*, discusses various problems of neutrality raised by the Civil War. Amongst those considered are premature recognition and the obligation of non-intervention [non interference]. In a preface the author refers to his discussion of the international doctrine of recognition as "the only parts of this publication which attempts anything like original investigation" and the result is a real contribution upon which succeeding writers have largely relied. Sir Vernon Harcourt says of the letter on intervention that it is of "rather a political than a juridical cast." We might add that he has confined his discussion to the political instances of interference rather than to juridical intervention. If we bear in mind that his generalizations apply mainly to instances of political interference in the internal affairs of other states, his valuable discussion of this phase of the subject will prove of great assistance. He does not take up interposition for the protection of the rights of nationals under international law nor collective intervention to vindicate the law. If other authors who have discussed the whole range of intervention had been equally searching in their analysis, we should not find the subject in its present chaotic condition, but unfortunately, many of the authorities have applied Sir Vernon

Harcourt's generalizations intended to apply only to interference in international affairs to all phases of intervention without sufficient discrimination. The three letters on recognition, pp. 1-37, and the letter on "The perils of intervention," pp. 39-51, is as has been said the portion of interest for the study of intervention.

[Harris, Norman Dwight, 1870—]

Intervention and Colonization in Africa.

*Boston, 1914.*

15-1468

DT31.H3

Does not discuss or bear upon the principles of intervention.

**Hautefeuille, Laurent Basile, 1805-1875.**

Le principe de non-intervention et ses applications.

*Paris, 1863, 67 p., 8°. What appears to be the same article was printed in the Revue Contemporaine, July 31, 1863, 2nd series, vol. 34, p. 211.*

[in New York Bar Association Library, Boston Public, and Boston Athenaeum]

In the form of a scientific study of the principles of non-intervention, this is really a clever apology for Louis Napoleon's failure to intervene effectively in Poland. Hautefeuille attempts to justify as a proper instance of permissible diplomatic intervention the offers of mediation so called between the North and the South then in Civil War. (Cf. the biting satire with which "Historicus" ridicules Napoleon's suggestions.) This pamphlet must be considered either insincere or prejudiced to an unusual degree, but for the well-informed reader it contains much which is entertaining and something also of value.

For instance, the criticism of the essential interests as a justification for interference (p. 49) and (p. 53) his characterization of the treaty of February 8, 1863, as an actual intervention [interference] in the Polish question; p. 54 he makes some wise reflections about the importance of secret counsels or representations.

+++Heffter, August Wilhelm, 1796-1880. [Professor of Law, Berlin University.]

Das Europäische Völkerrecht der Gegenwart—  
aus den bisherigen Grundlagen.

*1st edition, 1844, translated into French by Bergson, Paris, 1857. After the author's death, Geffcken prepared 3 more editions. The edition, Berlin, 1881, adds nothing to the text of the 4th edition, 1861, relative to intervention (§§ 44-46) except a note p. 109.*

20-3758 [2 edition]

JX2787.E3.1843

This is one of the best text-books to consult upon the subject (See §§ 44f). The list of references in the notes shows careful study. Geffcken's note (7 ed., p. 109) criticizes Heffter's statement of the right to intervene to end or to forestall civil wars.

### \*\*\*Heiberg, Dr.

Das Princip der Nichtintervention in seiner  
Beziehung auf die äussere and inner organisation  
des Staats.

*Leipzig, Otto Wigand, 1842.*

[Columbia Law Library]

Heiberg sees in the revolution of 1830 the triumph of the principle of non-intervention [non-interference] giving expression to the rights of peoples as opposed to the former principle of intervention [interference] (pp. 3-11).

He goes on to discuss the principle of non-intervention [non-interference], which he finds alone can allow each people the freedom necessary to conform to the law of nature. He asserts that man is capable of this adjustment, since man has life and movement as part of an ever developing nature, or the ever creating spirit (p. 12).

In reference to intervention for humanity, Heiberg says: The foundation of all civilized states is the higher union which is attained through the maintenance of general peace and through the development of the social conditions [Kulturzustand] of the peoples. "When these actual cosmopolitan interests, which rest upon assured rights and reciprocally recognized principles, are endangered and ignored intervention often becomes unavoidable." (pp. 14-15.) But Heiberg quotes with approval the elder Rotteck against interference in revolutionary troubles of a neighboring state, and criticizes Dr. Trummer's reply in which the latter

argued that a state could not remain indifferent to the errors prevailing on the other side of its frontiers against the propagation of these doctrines. (p. 15.) Heiberg remarks: "A state which can be ruined in this wise, must either be tottering, and out of touch with higher civilization (Kultur), or the ideas and danger-laden system which has gained recognition in the state from which the danger threatens must have truth in them (p. 16).

The remainder of the study from page 27 on is devoted to a consideration of the rights of the German princes, as opposed to the rights of sovereignty of Germany.

**\*Heller, Karl**

Die Frage der Zulässigkeit der völkerrechtlichen Intervention.

*Dissertation, Erlangen University, Borna, Leipzig, 1915, viii+34 p., 8°.*

[Harvard Law Library]

This is a well arranged study of the admissible grounds of intervention which are enumerated, p. 12-30. Of especial interest is his discussion of humanitarian intervention, p. 24. The works show wide reading of the German authorities. Heller's plan of treatment is more comprehensive than is generally found, and he goes at the problem in the correct way but the work is not carried sufficiently far to give it the value which we might expect on account of the ability of the author.

**Hengstler, L. T.**

The Principle of Intervention. (Lecture delivered in an extension course, San Francisco, November, 1898.)

*University of California Chronicle, Berkeley, 1898, p. 521-538.*

[New York Public Library, in Library of Congress [LD739 Vol. I], but not analyzed]

An interesting popular discussion of the justification for intervention from a common sense point of view. It is to be regretted that the author did not make a thorough study of the question.

**Hermant, Joseph.**

La revolution hongroise de 1848, Les nation-



alités, leurs luttes et leurs revendications, l'intervention polonaise et l'intervention russe.

*Paris, Rousseau, 1902. xiii+428 p., 8°.*

[New York Bar Association Library]

**Hermes, oder Kritisches Jahrbuch der Literatur.**

*Leipzig, F. A. Brockhaus, 1819-31. 35 vols., pl., 23 cm. Quarterly, 1819-24; irregular, 1825-31.*

Vol. XI, p. 142-156, contains an important review of Kamptz's work, signed "R. Q." See Kamptz.

7-3737

AP30.H6 Vol. XI

**Hershey, Amos Shartle, 1867—**

Intervention and the recognition of Cuban independence.

In *The annals of the American Academy of Political and Social Science. Philadelphia, 1898. Vol. xi, p. 353-380.*

CD 16-199

H1.A4. Vol. 11

A superficial discussion.

**Hershey, Amos Shartle, 1867—**

Incursions into Mexico and the Doctrine of Hot Pursuit.

In *American Journal of International Law, July, 1919, vol. 13, p. 557.*

**Hertslet, Sir Edward, 1824-1902.**

The Map of Europe by Treaty; showing the various political and territorial changes which have taken place since the general peace of 1814. With numerous maps and notes.

*London, Butterworths [etc.] 1875-91. 4 vols., maps (part fold), 25½ cm. Vol. 4: Printed for H. M. Stationery office by Harrison and Sons.*

10-15038

JX626 1875

**Hervé, François-Edouard,**

Intervention.

In *Block's Dictionnaire générale de la politique*,  
*Vol. II*, 1874.

9-10566

JA62.B7

An ill-considered article. Hervé concludes a superficial account by condemning intervention absolutely. He seems to be thinking principally of intervention on the grounds of humanity.

**Heyne, G. J.**

Reges a suis fugati externa ope in regnum  
reducti.

*Goettingen*, 1791, folio.

This work is cited by A. de Floeckher: *L'intervention*, p. 34.  
I have not been able to consult this work.

**††Hobart, Vere Henry Hobart, Lord**, 1818-1875.

Political Essays.

*London and Cambridge, Macmillan & Co.*, 1866.  
152 p., 23 cm. [Originally published in "*Macmillan's Magazine*," December, 1864, vol. 2, p. 114-123.]

A11-2730

H35.H68

Hobart makes an effort to find a rule of conduct regarding intervention. He first discusses when intervention would be justifiable if feasible without expense, and then considers the price which should be paid. He advocates recourse to intervention in those cases when it is justifiable, and when the cost is not out of proportion to the result to be obtained. He also advocates remonstrance ("moral intervention") even when recourse to force is not intended. He adopts Mamiani's doctrine of nationalistic intervention, and regards the struggles of nationalities on the same plane as those between independent states. The study is valuable, particularly as an early effort to establish some sound and practical rule of conduct to govern state action. Noteworthy, also, is his discussion of the right to intervene in defense of international law.

**\*Hodges, Henry Green, 1888—**

The Doctrine of Intervention.

*Princeton, The Banner Press, 1915.*

17-18355

JX4481.H6 1915a

This doctrinal dissertation from the University of Pennsylvania has the usual defect of immaturity, and was evidently not based upon a thorough study of the authorities. Nevertheless, the author has considered the problem in an intelligent manner, and is one of the few who have attempted a comprehensive classification of the grounds of intervention. The consideration of the justification for humanitarian intervention (p. 91) may be considered characteristic of the whole work. He appreciates the importance of this institution, and foresees for it a greater development in the future. He then refers to several writers of lesser merit, without mentioning Rougier, Arntz, Bernard, and the German writers who have studied the question more profoundly. The treatment cannot be considered juridical.

**\*Hogan, Albert Edmond.**

Pacific Blockade.

*Oxford, The Clarendon Press, 1908. 183 p., 23 cm.*

9-6476

JX4494.H7

Contains valuable accounts of incidents of intervention in those cases when pacific blockade has been used. Many comments of interest.

**Holland, Thomas Erskine, Sir, 1835—**

Studies in International Law.

*London, 1898.*

4-14210

JX2531.S3 1898

Pacific Blockade is discussed, p. 130-150.

**Humanitarian Intervention.**

For especial consideration of humanitarian intervention see *Rougier*; *Snow*; *Arntz*; *Fugitive Slaves*; *Woolsey, T. S.*; *American Foreign Policy*, p. 74-6 passim; and under *Cuba 1868-1878*; *Cuba 1895-98*; *Greece 1827*. Many other references will be found in the text § 8 to § 8(g). Consult also index.

**Hungarian Revolution, 1848-1852.**

Russia's interference raised the question of the obligation of counter-intervention by other states. This also led to the discussion of the difference between the right and the obligation to intervene and the question of protest without armed intervention. In the matter of the Hungarian refugees in Turkey, England intervened to prevent their enforced extradition.

*Boardman, Henry A.*: The new doctrine of intervention tried by the teachings of Washington, 1852. 63 p. [An interesting and powerful argument against intervention in favor of Hungary.]

10-25312

E429.B66

*Doane, George Washington, bp.*, 1799-1859; Influence without intervention, 1852. [Not important.]

19-3099

E286.B96 1852

*Goepp, Charles*: "E Pluribus Unum" a political tract on Kossuth and America. 36 p.

10-25311

E429.G59

*Hermant, Joseph*: La Revolution Hongroise de 1848, Les Nationalités leurs luttes et leurs revendications; L'Intervention polonaise et l'intervention russe, *Paris (Arthur Rousseau) 1902 XIII—428 p., 8°.*

[New York Bar Association Library]

*Reid, William Bradford*: A few thoughts on Intervention by a citizen of Pennsylvania, *Philadelphia, 1852*, [opposes intervention in favor of Hungary].

11-14820

E429.R32

*Sproston, Charles*, 1890-1917: Palmerston and the Hungarian revolution, *Cambridge University Press 1919. XI+148 p.* [A very important study which shows how Palmerston did intervene to prevent Russia and Austria from constraining Turkey to deliver over the Hungarian refugees.]

20-286

DB936.S7

*U. S. Dept. of State. Affairs of Hungary 1849-1850. Government Printing Office 1918, 64 p.* Senate Document No. 282, 65 Congress, 2d Session.

18-26872

DB938.A5 1918

*U. S. Dept. of State. The Austro-Hungarian question, Correspondence between Mr. Hulseman and Mr. Webster. Washington, 1851. 23 p.*

11-34452

E429.U58

The following speeches were made in the Senate relative to intervention in favor of Hungary:

## INTERVENTION

*Bell, John*, April 13, 1852. On Non-Intervention in the affairs of Europe. 16 p. [Condemns meddling.]  
10-25151 E429.B43

*Cass, Lewis*, January 4, 1850. On Suspending diplomatic relations with Austria. 8 p.  
11-24457 E429.C34

*Cass, Lewis*, February 10, 1852. Non-Intervention. 16 p. [Discusses the consequences of protesting against the action of another state and defends the right and utility thereof.]  
[Reprint in Boston Public Library]

*Clemens, Jeremiah*, December 10, 1851. On Mr. Seward's resolution relative to Louis Kossuth.  
10-25149 E429.C62

*Clemens, Jeremiah*, February 12, 1852. On Non-Intervention. 8 p. [Refutes arguments of Kossuth and opposes intervention against Russia. Is not important.]  
[Reprint in Boston Public Library]

*Clarke, John H.*, February 9, 1852. On the subject of intervention.  
[Reprint in Boston Public Library]

*Cooper, James*, April 28, 1852. On Non-Intervention. 23 p.  
[Reprint in Boston Public Library]

*Hunter, Robert M. T.*, January 31, 1850. On suspending diplomatic relations with Austria. 7 p.  
10-25150 E429.H94

*Jones, James C.*, March 18, 1852. On Non-Intervention. 16 p.  
20-18467 E429.J77

*Miller, Jacob W.*, February 26, 1852. In defense of American policy of Non-Intervention. 7 p.  
[Reprint in Boston Public Library]

*Seward, William H.*, March 9, 1852. On the proposed protest of the United States against the armed intervention of Russia in the Hungarian revolution. 16 p.  
[Reprint in Boston Public Library]

*Stockton, Robert F.*, February 2, 1852. On Non-Intervention, 8 p., 8°.   
19-20271 E.429.S86

*Smith, William R.*, in the House of Representatives December 15, 1851 [spoke in opposition to Kossuth and intervention in favor of Hungary]. 16 p.  
11-24458 E429.S66

†Hyde, Charles Cheney, 1873—[Professor of Law, Northwestern University].

Intervention in Theory and in Practice.

*Illinois Law Review*, May, 1911, vol. 6, p. 1-16.

Also printed in *Law Students' Helper*, 1911, vol. 19.

An objective study of the policy of the United States in regard to intervention, with careful consideration of the instances. Professor Hyde discusses the practice of the United States, and gives full references to sources. He concludes his discussion with a statement of the cases when the United States may be expected to intervene. This is one of the best short considerations. No attempt is made to discuss the fundamental principles, but Mr. Hyde traces in broad lines the theory as it has influenced the practice of the United States Government.

#### **Institut de droit international.**

Report presented by M. Desjardins on intervention and recognition in the case of insurrection.

In *Annuaire*, 1898, vol. 17, p. 71-95.

10-16478

JX24.I4. Vol. 17

This report bears upon the Cuban question which was a question of general interest at that time.

**Intervention for Humanity: See Humanitarian Intervention.**

#### **Kamarowski, Count**

The Principle of Non-Intervention [in Russian]  
Moscow, 1874.

F. de Martens includes this in his bibliography, cited also by Donnadieu. I was unable to find it in this country.

††[Kampts, Karl O. A. H. von], 1769-1849, [published anonymously].

Völkerrechtliche Erörterung des Rechts des Europäischen Mächte in die Verfassung eines einzelnen Staats sich zu mischen.

*Berlin Nicolaischen Buchhandlung, 1821.*  
*XVI+214 p., 8°.*

[Harvard Law Library]  
 [Yale University Library]

This work attempts to justify interference in the internal affairs of independent states on the ground that revolutionary changes even if only by their example endanger the peace and security of other states—that is of the whole structure of international society. This indefensible policy which had at that time recently been adopted by the Holy Alliance under the guidance of Metternich is supported with all the skill of an expert partizan. Kamptz, the anonymous author, is sound in his premise that “the peace and security of the community of European States” is a sufficient ground for action, and again he is correct in declaring that intervention for such a purpose is for the society of states as necessary as is police action within each of the separate states (cf. Preface, p. VII, VIII), but he nowhere shows that a constitutional change or revolution does constitute such a danger. Kamptz sets down with lucidity the fundamental proposition that every independent state is free to settle its internal affairs as may seem to it best (p. 1) and he supports this principle by a great and learned array of authorities and documents. But as he briefly states: “This independence of the European States is certainly not unconditional” (p. 3, par. 2). He then points out still without the possibility of dispute that independence must be used in such a manner as not to injure the common interests of all the states. This he reminds us is no sacrifice of the rights of a state for in return it benefits from the same restriction placed upon the other states. So far so good. It is only when Kamptz proceeds to apply this rule and to make an effort to justify interference to prevent constitutional changes through revolutions that he parts company with law and indulges in what appears to be a highly prejudicial if not insincere effort to support the arbitrary policy of his government (Prussia) and the Holy Alliance.

The plan of the argumentation is admirable and worthy to serve as a model. After he has laid down his proposition clearly and defended it by a brief argumentation and supported it by such a judicious,—we might better say prejudiced, but none the less impressive,—selection of authorities, he devotes the remainder of the book (p. 85-214) to a discussion of the instances which have occurred in history to show that the states in their practice have interfered upon the grounds which it is the avowed intention of this work to justify.

The anonymous review in *Hermes* (Vol. XI, p. 142-156) severely criticizes the author of this work and his insincerity and prejudice in his selection of references to the authorities. H. von Rotteck (*Recht der Einmischung*, 1845, p. 9-10) criticizes Kampts severely as a creature of Prussian bureaucracy preparing an excuse for the anticipated action of the Congress of Verona, and concludes, "Let us leave Herr von Kampts who hardly needs refutation."

Notwithstanding the defects we have noted, the work is of value if used cautiously by one familiar with the principles and the authorities.

Professor Kebedgy modestly lays claim (p. 28) to undertake merely an elementary essay upon intervention. Nevertheless, he has given us a valuable study, albeit not a complete one, since we find for instance no consideration of counter-intervention. His analysis is accurate and fine. The definition which he gives, page 29, follows Bluntchli, to whom he refers. Pages 29 to 38 give interesting analyses of the cases of non-intervention and contain the gist of Professor Kebedgy's views. On page 40 he lays down the general principle that intervention is illegal and then admits certain exceptions when "absolutely necessary," and (page 42) he considers that states have a right to intervene for their self-preservation. Justifying intervention by virtue of a treaty he does not explain that treaties do not create the right (p. 70f). He goes carefully into humanitarian intervention (p. 78f) but would limit it to collective action or to mandatory action by which the discretionary action of the intervening state is eliminated (p. 82). He next takes up to deny the right of intervention in civil war in response to an appeal from the state and upon religious grounds. The remainder (p. 104-217) is devoted to a study of the instances in which the powers have intervened in Turkey.

**\*\*Kébedgy, Michel S.**

De l'intervention, théorie générale et étude spéciale de la question d'Orient. [Doctoral dissertation, University of Paris.]

Paris, A. Giard, 1890. 224 p., 25 cm.

9-8119

JX4481.K5

**\*\*Klüber, Johann Ludwig, 1762-1837.**

Droit des gens moderne de l'Europe, avec un supplément contenant une bibliothèque choisie du



droit des gens. Nouv. Éd. rev., annotée et complétée par M. A. Ott. 2 éd.

*Paris, Guillaumin et cie. [etc.] 1874. xxxii+573 p., 22½ cm.*

9-188857

JX2804.D6

**\*Kraus, Herbert.**

Die Monroedoktrin in ihren Beziehungen zur amerikanischen Diplomatie und zum Völkerrecht. *Berlin, J. Guttentag, 1913. 480 p., 24 cm.*

13-25349

JX-1425.K77

Herbert Kraus's "Monroedoktrin," is a painstaking and reliable investigation, well adapted to present the matter to the German scholars and others familiar with the German language. With this object in view, a short study of the diplomatic history of the question is included and the various instances where European countries have employed force in their dealings with the American States are carefully chronicled. It is only incidentally that the author takes up the question of intervention. Nevertheless, in the section devoted to the Monroe Doctrine and intervention, pp. 369-98, Kraus shows his familiarity with the authorities and supplies valuable bibliographical notes for intervention, non-intervention, self-help, self-preservation, balance of power, etc. These notes have an additional value because of the author's familiarity with the German authorities, to whom references are given. Selected bibliographies of the works on international law and of those relative to the Monroe Doctrine are included. The work is brought down to May, 1913.

**\*\*\*Krug, Wilhelm Traugott, 1770-1842.**

Dikäopolitik, oder neue Restaurazion der Staatswissenschaft mittels des Rechtsgesetzes. *Leipzig, bei T. H. F. Hartmann, 1824. X+420 p., 8°.*

[In my own Library]

Krug enters upon a discussion of the legal justification of intervention. After carefully drawing the line between mediation and intervention, he takes up the grounds which he considers justify intervention. But the context shows that he is only considering the ground for interference in constitutional affairs

and in civil disputes. He states that interference in the latter case is only justifiable in two cases: First, when it is based upon a treaty (p. 329-330) and Second, when an intentionally hostile propaganda is carried on in a neighboring state (p. 330-332). Krug then takes up by way of illustration of the first instance the justification for Russia's pending intervention in Turkey (p. 332-8). Thereafter he comes to what is evidently the purpose of all his preliminary statement of principles, namely: the discussion of French intervention in Spain (p. 338-364). His analysis of this instance is very interesting. He states and refutes the grounds alleged to justify French interference, and defines the limit of action which was justifiable on the grounds of national interests and security.

Discussing the necessity which drives a nation to make war, Krug denies that there can be a national physical necessity and considers that it has its source in a desire to extend dominions and gain in prestige (p. 66-67). He remarks that all states entering upon war declare that they do so to secure their rights (p. 370) and when they make peace they swear an eternal friendship, although this eternity is always of short duration, since they always find new occasions for war. All of this goes to show the place which the idea of society of the states, based upon law, holds, but this can only gradually be reached like every ideal (p. 371). He enters upon a remarkable discussion of the causes and motives for war and the hopes of attaining the ideal of peace. The nature of the balance of power is considered (p. 372f). Just war and the right of self-defense is taken up (p. 375f). Other questions, such as indemnity, and the right of the victor over conquered territory are also discussed. This is one of the most philosophical and comprehensive considerations which had appeared at that date.

**Latané, John Holladay, 1869—**

The Diplomatic Relations of the United States and Spanish America.

*Baltimore, The Johns Hopkins Press, 1900. 294 p., 20½ cm.*

1-2466

JX1428.S7L3

**Latané, John Holladay.**

Intervention of the United States in Cuba.  
in *North American Review*, March 1898, vol. 166,  
p. 350-361.

AP2.N7. vol. 166

Relates to Cuban insurrection of 1868-1878, which see.

**Laveleye, Emile, *baron de*, 1822-1892.**

On the causes of wars and the means of reducing their number.

in *Cobden Club Essays, Second Series, 1871-1872*, p. 1-55, London, 1872.

6-43714

H31.C55

Laveleye lists the causes of war. This list serves as well for the causes of recourse to other means of constraint, but his arrangement indicates that he does not go very deeply into the question.

**\*Lawrence, Thomas Joseph, 1849—1919.**

The Principles of International Law.

4th edition, Boston, 1910. xxi+745 p., 21 cm.

10-26825

JX2542.P3 1910

Suggestive, simple, clear and sound for the most part but not uniformly juridical or consistent.

**Le Fur, L.**

Étude sur la guerre hispano-américaine de 1898 envisagée au point de vue du droit international public.

Paris, A Pedone, 1899. xlii+316 p., 24½ cm.

2-126 M2

E723.L49

Criticizes U. S. intervention in Cuba as unjustifiable. Says intervention on ground of humanity only justified when intervener is disinterested (p. 42-43).

**Lévides, S. M.**

Le droit d'intervention des grandes puissances à propos du conflit gréco-roumain.

in *Revue générale de droit international public*, 1906, vol. 13, p. 582-588.

10-31105

JX3.R56

Criticizes Roumania and advocates collective intervention of powers. Not important.

**Limburg, Stirum, J. P. van Tets.**

Over de Volkenrechtelijke interventie.

*Leyden: Klein, 1895, 93 p., 23 cm. Thesis, Leyden, 1895.*

[Columbia University Library,  
Harvard Law Library]

**+++Lingelbach, William Ezra, 1871—**

The doctrine and practice of intervention in Europe.

in *The Annals of the American Academy of political and social science, Philadelphia, 1900, vol. 16, No. 1, p. 1-32.*

GD 17-41

H1.A4

Based upon the paper read before the Rouen Conference of the International Law Association, 1900 Report, p. 106-116; an article, original, sound, and constructive; it shows that Intervention is a valuable sanction to enforce international law, and points out that, being the instrument of a political government, it is given a political tinge to correspond with the sentiments of the epoch.

**Liszt, Franz von, 1851-1919.** [Professor of Law, Berlin University.]

Das Völkerrecht.

*10 ed., Berlin, 1910; 11 ed., 1918.* [An unaltered reprint is dated Berlin, 1920.]

20-20582

JX3445.V4 1920

The consideration of intervention is not very exhaustive, but is important because of the ability of this author, his high standing as a learned and scientific jurist, and also because of his influence on German thought. The Carnegie Endowment for Peace announces a French translation.

**Liverpool, lord.**

Debate in House of Lords, February 19, 1821, relative to justification of conduct towards Naples.

in *Hansard's Debates, New Series, vol. IV, p. 760-771.*

Justification for interference—Proper to remonstrate in certain cases when interference is not justifiable—Denies that there was a refusal by the Government to recognize the Naples Government.

**Lorimer, James, 1818-1890.**

The Institutes of the Law of Nations.  
*Edinburgh and London, 1883-1884. 2 vols.*

5-394

JX2548.15 1883

Important discussions of the basic principles of intervention and of the balance of power.

**Lynden van Sandenburg, Frederik Alexander Carel van.**

Eenige beschouwingen over interventie in het internationaal recht.

*Utrecht, P. den Boer, 1899. [Disseration, Utrecht University.]*

D-297

JX4481.L9

\***Mackintosh, Sir, James, 1765-1832.**

History of the Revolution in England in 1688.  
[Completed and published posthumously.]  
*London, 1834. clxxvi, 734 p., 28 cm.*

2-28671

DA435.M18

In Chapter IX discusses right of revolution, and compares to the right of making war; lays down principles (p. 297), remarks upon perils of calling in auxiliaries (p. 302-3). In Chapter X discusses interference. Creasy probably refers to Chapter X when he says: "For a complete exposition of the causes which, *and which alone*, justify insurrection and foreign intervention on behalf of the insurgents, see Mackintosh's 'Review of the Causes of the Revolution of 1688,' chap. ix [X]. Students of Ethics, of History, and of International Jurisprudence cannot bestow too much attention to this chapter, which is the gem of all Mackintosh's works." (Creasy: First Platform of International Law, p. 297 note.)

"The first portion of this volume, consisting of the fragment by Sir James Mackintosh, was published separately under...title: View of the reign of James II, Lond. 1835." (Lowndes: Bibliographer's manual of Eng. lit.)

**Maine, Sir Henry James Sumner, 1822-1888.**

International Law; a series of lectures delivered before the University of Cambridge, 1887.

*London, J. Murray, 1888. 4 p. l., 234 p., 23 cm. (The Whewell lectures, 1887.)*

4-3855

JX2555.16 1888

**\*Mamiani della Rovere, Terenzio, conte, 1799-1885.**

Rights of Nations, or The New Law of European States applied to the Affairs of Italy. [Translated from the Italian (Turin, 1859), and edited with the author's additions and corrections, by Roger Acton.]

*London, 1860.*

10-17147

JX2897.D3 1860

Mamiani, in his dedication of the English edition, calls it an English version of an Italian book of English principles, and the English edition is dedicated to Lord John Russell in memory of his despatch addressed to the courts of Paris and Vienna, the sixteenth of August, 1859, prohibiting the intervention of any foreign force to put down the will of the people in central Italy.....

About one-third of the book is devoted mainly to a discussion of intervention. Mamiani's work must be considered important because it is often referred to, and has influenced others, in part no doubt, because there were not at that time so many books available to English readers dealing with the subject of intervention.

Page 140f., Mamiani denies the right of intervention in a civil war, but permits such intervention when the war is waged by a subject people, as in the case of the Dutch against the Spaniards, the Swiss against Austria and Burgundy, etc. (p. 144).

In chapter X, discussing the maintenance of equilibrium in the states of Europe, he criticizes intervention for that purpose, seeming to fear that the maintenance of the European equilibrium

might stand in the road of the consummation of national aspirations.

Chapter XI defends the principle of non-intervention.

Chapter XII begins with a declaration that—"It is now time for us to examine those peculiar cases in which, more especially, it is sought at the present day to find a right of intervention, those cases, namely, in which revolutions and political changes in the interior of a state are deemed pernicious to the security and the tranquility of other states, and chiefly of those adjacent to it."

He then proceeds to examine whether there are exceptions to this principle. Mamiani recognizes the right of intervention against intervention, discussing intervention on the ground of humanity (p. 182), and so hedges around the right of intervention claimed by Grotius as practically to deny it.....Rougier speaks of Mamiani as a founder of a theoretical school which placed the doctrine of non-intervention upon the plane of an intangible dogma and says that he had as a brilliant disciple Carnazzi Amari. (*Revue générale*, vol. 17, p. 297.)

Bernard (*Non-Intervention*, pp. 18-19) says of this work: "Count Mamiani is a man who has suffered and labored much for the regeneration of Italy. He has been an insurgent, a prisoner, an exile, was President of Ministers during Pius the Ninth's short attempt at Parliamentary government, remained at Rome, I believe, till the French entered it, has since been an active member of the Sardinian Parliament, and in January last became Minister of Public Instruction under Victor Emmanuel. He has this year (? 1860) published a thoughtful and eloquent, though not very closely reasoned, book, entitled "A New European Public Law," the scope and drift of which are such as we might expect from the antecedents of the writer,—that is, it shares with some of the best existing books on international law the defect of having been composed to support a foregone conclusion.

Hall (4 Ed.) quotes Mamiani with approval in footnotes to his discussion of intervention. He refers to Mamiani at least four times.

### \*\*\*Manning, William Oke.

*Commentaries on the Law of Nations.* [A new edition revised with supplementary matter by Sheldon Amos.]

*London, 1875.* [*First published in 1837.*]

10-17126

JX2558.C7 1875

For a discussion of intervention, see Bk. III, ch. I, p. 91-102; Bk. IV, ch. I, p. 131-141. The careful revision and notes of

Amos give this work an additional value for the study of intervention.

**Marckart, Jo. Guil.**

De jure atque obligatione gentium succurendi injuste oppressis.

*Harderov, 1748.*

Cited by Heffter: *Völkerrecht*, 4 ed., § 46, p. 95. I was unable to consult this work.

**Martens, Fedor Fedorovich von, 1845-1909.**

Traité de droit international. Tr. du russe par Alfred Léo. [Also into German by Bergbohm, 1883-6. 2 Vols.]

*Paris, Chevalier-Marescq et cie., 1883-87. 3 v. 22½ cm.*

1-18881

JX2951.T5

Often referred to because of the prominence of the author. The discussion of intervention is biased and incomplete. It is of value as the exponent of Russian policy under the old régime.

**\*\*\*Martens, Georg Friedrich von, 1756-1821.**

Précis du droit des gens moderne de l'Europe. Augmenté des notes de Pinheiro-Ferreira.

*Paris, Guillaumin et cie., 1864. 2 vols., 18 cm. [1st ed. was published in French in 1788.]*

10-17086†

JX2324.P3 1864

De Martens' *Précis* is generally recognized as one of the earliest and also as one of the best texts of the positive school which bases international law upon the principles as shown by the practice of states and not deduced apriori from principles dogmatically asserted. Upon this basis de Martens denies the right of interference in internal affairs (Ed. 1821, § 116, p. 215; § 117, p. 216), save in certain exceptional cases, and he does not include permission to interfere on the ground of constitutional objection to provisions and changes (Ed. 1821, § 73, p. 137; § 79, p. 138; § 78, p. 146). De Martens recognizes that even a guarantee of the previous constitution does not authorize interference (§ 78, p. 146). De Martens recognizes the right to intervene to prevent religious persecution (i. e. humanitarian



intervention: on the ground of intolerance) but he recognizes that in practice political considerations govern recourse to this action (Ed. 1821, § 114, p. 211). It is especially profitable to read what de Martens says in regard to the Balance of Power and the right of growth (§§ 120-4, p. 219-231). A sense of measure and the needs of statecraft derived from practical experience and combined with extraordinary learning place de Martens in the first rank of publicists.

**Martin, Charles Emanuel.**

The Policy of the United States as Regards Intervention.

*New York, 1921. In Columbia University Studies in Political Science, No. 211, 1921, vol. 93. 173 p., 22½ cm.*

21-3655

JX4481.M3

Restricted to a discussion of the policy of the United States, this work does not particularly consider the principles governing intervention.

**Martinet, André.**

La seconde intervention française et le siège d'Anvers, 1832.

*Brussels, 1908. 8°.*

[Hague Peace Palace Library]

I was unable to consult this work.

**\*Maxey, Edwin, 1869.** [Professor of Law, West Virginia University.]

International Law with Illustrative Cases.

*St. Louis, 1906.*

6-11647

JX3151.I5 1906

For a discussion of intervention, see ch. IV, p. 338-342. Professor Maxey gives a very concise and accurate summary of the views generally accepted. His book is listed for this reason. Professor Maxey denies the validity of intervention for humanity (p. 341).

**Mexico, 1861-1868.**

This instance was in part interposition for redress and in part a political interference by France against which the counter-

intervention of the United States was directed. It is of little value for the study of the principles.

*Dunaway, Clyde A.*: Reason for the withdrawal from Mexico in *American Historical Association Report, 1902, Vol. I, p. 313-28.*

*Blanchot*: Intervention française au Mexique, *Paris, 1911, 3 vols.*  
[New York Bar Association Library]

Many other references will be found in the Library of Congress Bibliography on "Arbitrations," p. 101-114.

### Mexico, 1911-1921.

Relates to interposition for redress; Interference in the internal affairs of Mexico; Delayed recognition; The supervisory capacity of the United States; Self-Help and Collective Action. Only two works of importance have come under my eyes:

*Moore, John Bassett*: Principles of American Diplomacy, *New York, 1912, p. 213-38* [gives a succinct but noteworthy account of the events and of the policies of the Wilson Administration towards Mexico up to 1917].

*Schoenborn, Walter*: Die Besetzung von Vera Cruz.

*Hodges*: Intervention [comments favorably upon the policy of the Wilson Administration towards Mexico].

*Inman, Samuel Guy*: Intervention in Mexico, foreword by Professor William R. Shepherd. *New York, Association press, 1919.*

19-13639

F1234. I 57

*Anonymous*: Nicaragua and Mexico in *Nation, September 12, 1912, vol. 95, p. 386* (A P 2, N 2, V. 95) [condemn landing of American troops in Nicaragua and opposes intervention in Mexico.]

*Anonymous*: Our duty in Mexican disorder, in *Literary Digest, September 21, 1912, Vol. 45, p. 455-456* (A P 2, L 58, v. 45). [Interesting resumé and extracts from press commenting on the situation in Mexico and the pros and cons of intervention.]

*Bell, Enoch F.*: Intervention and the Mexican Problem in *The Journal of International Relations, October, 1919, pp. 138-150.* [A well written article arguing against armed intervention and pointing out the peaceful methods of helping Mexican progress.]

*Culberson, Charles A.*: Brief in support of Senate resolution of April 20, 1911, relative to intervention in affairs in Mexico. . *Washington, 1911. 7 p., 23 cm. (U. S. 62d Cong., 1st sess. Senate. Doc. 25).*

11-35422

JX1428.M5A4 1911

*Hershey, Amos S.*: Mexico and International law. In *Independent, April 6, 1911, vol. 70, p. 708-711.* (A P 2, I 53 v. 70)

[Interesting popular discussion of the obligations and rights of the U. S. in regard to Mexico. Quotes Root with approval as denying the right to collect contract debts by force].

*Turner, John Kenneth*: What we should do about Mexico. In *Nation*, December 13, 1919, pp. 740-742.

*Turner, John Kenneth*: Why we should leave Mexico alone. In *Nation*, November 29, 1919, pp. 680-682.

*Tarlé, A. de*: L'Intervention Militaire des Etats-Unis au Mexique. In *Questions diplomatiques et coloniales*, May 1, 1912, Vol. 33, p. 526-538 [Discusses the military situation of the United States in the event of intervention in Mexico].

The Library of Congress in a typewritten list gives the following additional items from the Congressional Record: *Slayden, James L.*; *Stone, William J.*; *Murray, William H.*; *Sherwood, Isaac R.*, and the debate of August 21, 1913, in the Senate.

++++**Mill, John Stuart, 1806-1873.**

A Few Words on Non-Intervention.  
in *Frazer's Magazine*, May, 1859, p. 766-771; also  
in *Mill's Dissertations and Discussions*, London,  
1868, vol. III, p. 153-178.

8-4265

AC8.M48

A strong argument for veritable non-intervention in all cases.

**Mill, John Stuart, 1806-1873.**

The Letters of John Stuart Mill; edited, with  
an introduction, by Hugh S. R. Elliot.  
*London, 1910, 2 vols., 23½ cm.*

A 10-473

For remarks on intervention, see vol. I, p. 195; vol. II, pp. 24, 305.

**Monroe Doctrine.**

The Monroe Doctrine relates especially to counter-intervention and the right of preventive action. It is also closely connected with the ill-defined supervision of the United States over less developed states of Central and South America. Unfortunately the numerous works upon the subject do not generally appear to have discussed the principles of intervention. For this reason

I did not think it profitable to attempt to make a complete examination of the material. The student is referred to the account given by Professor *John Bassett Moore*: *Principles of American Diplomacy*, p. 269, and *Herbert Kraus*: *Die Monroe-doktrin*. The Library of Congress supplies a large collection of cards upon this topic.

\*\*\***Moore, John Bassett, 1860—**

A Digest of International Law.  
*Washington, 1906. 8 vols.*

6-35196

JX237.M7

Volumes V, VI, and VII contain documents and comments of first importance for the study of the theory and practice of international intervention. Vol. VI is devoted entirely to Intervention.

\*\*\***Moore, John Bassett, 1860—**

The Principles of American Diplomacy.  
*New York, 1918. xv+477 p., 8°.*

18-2711

JX1407.M8 1918

Brings the author's *American Diplomacy*, 1905, down to date. Discusses the American Policy of "Non-Intervention" p. 197-238. For references, see p. 269. Discusses Monroe Doctrine, p. 238-69. Bibliography, p. 269.

**Morillon, Charles, de.**

Du principe d'intervention en droit international public et des modifications qu'il a subies au cours de l'histoire.

*Dijon, Imprimerie régionale, 1904. 182 p., 25 cm.*

8-29311

JX4481.M7

\*\***Moser, Johann Jakob, 1701-1785.**

Versuch des neuesten europäischen Völkerrechts in Friedens-und Kriegs-zeiten.

*Frankfurt, 1770-80. 10 v. in 12. 20½ cm. Vol. 9-10 each in two parts.*

10-16946†

JX2333.V5 1777

Moser in the sixth part of his "Versuch" (p. 96-7, 184, 312) passes in review the right of independent states to be free from interference (p. 313, 318, 398-9) and enumerates, rather dogmatically, it is true, certain of the rightful causes of action. These he supports with instances drawn from the experience of states since 1740. Among the exceptions to the general rule of non-interference, Moser recognizes as grounds of intervention or "meddling" (*mengen*, as he calls it) the following: When a constitution is guaranteed and when the action is based upon a treaty (p. 314-15); when an invitation is freely extended by the sovereign, but he qualifies this in cases where the state is divided into two contending factions (p. 323). Although Moser in his discussion of the relations of states, due to religious matters (p. 184-312; cf. 157-183) excludes interference upon religious grounds (p. 166-7 *passim*) he recognizes the right to intervene when necessary to protect individuals from persecution for their religion (p. 184) and he declares that "when one or more religions beside the state religion are permitted or tolerated in a state, the state religion may not make use of its privileges to injure the legally acquired rights of the other religions, either in spiritual or worldly matters" (p. 167). In general he recognizes the right of intercession and peaceful representation by a foreign state to prevent persecution (p. 96-7) and he reproduces by way of precedent and illustration the very forcible instructions addressed by Lord Harrington March 5, 1745, to the British Minister at Vienna to continue to make the strongest efforts to prevail upon the Queen to revoke the decree expelling the Jews from Prague. It appears that the Netherlands had likewise made representations against this act. (p. 96-7, Moser cites *Mercur*; 1745, Vol. I, p. 363). This is a clear and early instance of humanitarian action in favor of the Jews. In this connection we may refer to Moser's recognition of the right of each sovereign state to receive within its own territory fugitives who have left their native land because of persecutions on account of their religion or beliefs (p. 176-8). Another ground of intervention which Moser enumerates is when disorder and anarchy cause injury or constant apprehension to neighboring states (p. 320), or when there exist circumstances which justify apprehension of attack (prevention). Upon this head Moser remarks that the states of Europe would not be justified in placing too great a reliance upon their neighbors, but he thinks that the peaceful intentions of republics are guaranteed by their constitutions, their [lack of] strength and their interests, and proved by experience (p. 400). An interesting discussion of the obligation of the sovereign, in the interest of the preservation of peace, to try to give the requisite assurances to quiet the apprehension of

his neighbors (p. 319-406) is supported by instances drawn from the practice of states (p. 406-420). Moser's positive method is that which has been followed by later writers and the fact that he intends to and does derive his views of intervention from existing state practice places him as an early authority of the highest rank.

**Ninagawa, A.**

Intervention.

in *Japanese Journal of International Law*,  
November 1912, vol. XI.

Manuscript English translation may be consulted in the  
Carnegie Endowment for Peace Library, 2 Jackson Place.

Ninagawa only tries to get a definition for intervention. He  
sees the confusion of the authorities, but does not himself reach  
a perfectly clear comprehension of intervention.

**Nys, Ernest.**

Le concert européen et la notion du droit inter-  
national.

in *Revue de droit international*, 1899.

**Oliva, Giuseppe,**

Del diritto d'intervento.

Messina, 1881. 285 and appendix 45 p., 8°.

[New York Bar Association Library  
and Harvard Law Library]

**Olivi, Luigi, 1847—**

La questione sul diritto d'intervento. Dinanzi  
alla scienza.

in *Archivio giuridico*, Pisa, 1880, vol. 24, p. 560-  
574.

[In Library of Congress, Law Periodicals]

**Oppenheim, Lassa Francis Lawrence, 1858-1919.**

International Law, a Treatise.

2d ed., London, 1912. 2 vols. [3 ed., vol. I, 1920,  
edited by Ronald F. Roxburgh.]

12-2550 Additions

JX3264.I6 1912

\*\*\*Payn, F. W.

Cromwell on Foreign Affairs, together with four essays on international matters, one of which is entitled: "Intervention Among States."  
*London, C. J. Clay and Sons, 1901.*

2-12277

DA45.P2

The third paper is entitled "Intervention Among States." The author contributes an original investigation of the subject. He has examined the principal authorities and perceives how impossible it is to find any guiding consensus of opinion. His own analysis and classification is suggestive and should not be overlooked. It is, however, based upon the somewhat dangerous presumption that the affairs of the states grouped in international society must in certain respects bear close analogies to individuals in a modern state. Proceeding on this basis, Payn points out that a large body of the individuals of our state do not directly manage their own affairs since they are under a legal disability. He divides them into two classes: Those who are the normal subjects of this disability,—such as women and children,—and the abnormal,—such as imbeciles, convicts, and bankrupts. The application of this classification to various states leads, he thinks, to the conclusion that the interventions against Turkey in 1840 and against China in 1900 were in the nature of action taken to restrain dangerous lunatic states. Another series of interventions Payn considers to have been undertaken on behalf of the minor states in different stages of weakness, imbecility, and decay. The list of instances which he enumerates includes the intervention in Portugal in 1826, in Greece in 1827, in Belgium 1830-32, Quadruple Alliance in Portugal 1834, in Turkey 1840, 1854 and 1877, and he reaches the conclusion that:

"All the cases in this group have one feature in common. The interventions were undertaken on behalf of minor states in different stages of weakness, imbecility and decay, and in every case it is arguable that the intervention was in the main for the benefit of the State in the affairs of which it occurred, and was salutary in its effects on that State."

Mr. Payn sums up his views as follows:

"In order to discuss the subject with even the possibility of arriving at any tangible and profitable result, we submit that three stages are necessary, viz.: (1) a consideration of the analogy which undoubtedly exists between the phenomena of the lives of individuals in a modern civilized State; (2) a con-

sideration of the principal modern instances of intervention as illustrating that analogy; (3) a deduction of the principles of intervention based upon that analogy.''

Even if we are not ready to give to the analogy between states and individuals all the weight that the author believes it is entitled to, we must agree that he has adopted the correct course in basing his principles upon a careful consideration of the instances. He cites as authorities, Hall, Walker, Arntz, and criticizes the "Chinese Wall" theory of state life advocated by Carnazza Amari, pp. 75-78. He also commends the book of Chancellor Kent, p. 78.

**Phelps, Edward John, 1822-1900, [formerly American Minister to Great Britain].**

Letter on Cuban Intervention.  
in *New York Herald*, March 9, 1898.

This article is important, not as a correct appreciation of fact or principle, but because of the support it lent to the prejudices of writers on the Continent who condemned the American intervention. For an indication of its contents, see under Cuba, 1895-98. Mr. Phelps was appointed Professor of Law at Yale University and was elected President of the American Bar Association.

**\*\*Phillimore, Sir Robert Joseph, bart, 1810-1885.**

Commentaries upon International Law.

*London, 1854, 4 vols., 22 cm. 3d. ed. 1879-89.*

10-15576

JX2565.C4 1879

Intervention is discussed in 1st ed., vol. 1, Part III, Ch. X, XI, XVII, Part IV, ch. I, p. 433-483, 2d ed., 1871, Preface, p. VII-XV. This work is very useful as a collection of material and in part for its discussion, but Phillimore does not grasp the principles of intervention. He even confuses mediation and intervention, vol. I, p. 442-3. From his discussion of intervention on religious grounds it is hard to discover what view he takes. Of self-help he has given us an excellent discussion.

**\*\*Phillips, Walter Alison, 1864—**

The Confederation of Europe; a study of the European alliance, 1813-1823, as an experiment in the international organization of peace. [Six lectures delivered in the university schools,



Oxford, at the invitation of the delegates of the common university fund. Trinity term, 1913.]

*London, Longmans, Green & Co., 1914. xv+315 p., 23½ cm.*

14-8401

D363.P5

Mr. Phillips has also written a concise statement (about 500 words) of the Balance of Power in the *Encyclopaedia Britannica*, 11 ed., vol. III, p. 235.

**Poucel, Benjamin, 1807-1872.**

*Les ôtages de Durazno; souvenirs du Rio de la Plata pendant l'intervention anglo-française de 1845 à 1851.*

*Paris, A. Faure; Marseille, Camoin, 1864. vii+351 p., 25 cm.*

3-11096

F2846.P87

Not important.

**Pourcher, Charles.**

*Essai d'étude du droit d'intervention en Turquie appliqué au problème balkanique. [Dissertation, University of Paris.]*

*Clermont Ferraud, Dumont, 1904. 208 p., 24 cm.*  
[Columbia University Library]

**Pradier-Fodéré, Paul Louis, Ernest, 1827-1904.**

*Traité de droit international public européen & américain, suivant les progrès de la science et de la pratique contemporaines.*

*Paris, 1885-1906, 8 vols.*

6-32700

JX2725.T7 1885

This author devotes a part of Vol. I, (p. 546-678) to the discussion of intervention. He shows that he has thoroughly covered the literature and that he is conversant with the important instances, but his treatment is superficial. He adds little or nothing to the understanding of the principles, at the same time he avoids many of the errors and pitfalls.

**++Pradt, Dominique Georges Frédéric de Riom de Prolhiac de Fourt de, abp. of Machlin, 1759-1837.**

Le vrai système de l'Europe relativement a l'Amérique et a la Grèce.

Paris, 1826. 8°.

This is a plea for the recognition of the Latin American republics and the support of Greece to achieve her independence. Ch. XX, (p. 128-47) is entitled "Le droit d'intervention."

XXXI "Du droit d'intervention dans les affaires de la Grèce." The theory of "moral contagion" is discussed and intervention on this ground condemned (p. 142). The grounds of intervention are summed up and their justification denied (p. 146). This work is more than the political pamphlet it appears to be. The references are to a copy in the New York Public Library bound with Pradt's "Garanties à demander à l'Espagne," Paris 1827. Von Lintz refers to "Les Cabinets et les peuples depuis 1815 jusqu'à la fin de 1822" (3 ed.) Paris 1823. The Library of Congress lacks this but has Pradt's "L'Europe et L'Amérique en 1821," Paris 1822. [Card 8-10921, Class D.393.p6.]

**Quabbe, Georg.**

Die Völkerrechtliche Garantie [A portion of Staats- und Verwaltungsrecht by Brie and Fleischmann].

Breslau, 1911.

11-14728

JX4171.A863

This work was awarded a prize by the Law faculty of the University of Breslau (1909). The author supplies a valuable bibliography (p. VII-IX). He adds some notes to this (p. 6-8).

**Quesada, Antonio Miró.**

La intervencion Americana en Cuba. [Dissertation, Universidad de Lima.]

Lima, Peru. 20 p., 18 cm.

[State Department Library,  
Cuban Pamphlets 5, No. 16]

I did not think it necessary to consult this work.

**Quintana, Manuel.**

Discursos Parlamentarios sobre el derecho de intervencion.

*Buenos Aires, Boulosa, 1902.*

[Harvard College Library, SA5016.13]

I did not think it necessary to examine this work.

**"R. Q."** [Pseudonym].

An important review of Kamptz's work.  
in *Hermes* [a German periodical], vol. XI, p.  
142-156.

7-3737

AP30.H6 Vol.11

**Reynolds, William B.**

Intervention.

*Fort Leavenworth, 1898. 21 p.*

[New York Public Library]

I did not think it necessary to consult this work.

**+++Rivier, Alphonse Pierre Octave, 1835-1898.**

Principes du droit des gens.

*Paris, A. Rousseau, 1896. 2 vols., 22½ cm.*

*Rivier also published in Germany, 1889, his Lehrbuch des Völkerrechts.*

2-19974

JX2739.P9

Rivier has a reputation deservedly high in all countries. The student should not fail to consult him. Westlake (vol. I, p. 306) says of Rivier, "...one of the most accomplished jurists who have employed themselves on international law." J. B. Moore (Principles, p. 208), "...one of the most eminent publicists in Europe."

**+++Robin, Raymond.**

Des occupations militaires en dehors des occupations de guerre (étude d'histoire diplomatique et de droit international). [Doctoral dissertation reprinted with introduction by Louis Renault, p. i-iv.]

*Paris, L. Larose and L. Tenin, 1913. viii+824 p., 26 cm.*

15-7007

JX5003.R6

University of Paris theses, published the same year, with a preface by Louis Renault, pp. I-V.

This is the most complete treatment of the subject of occupation with which we are familiar. M. Robin's careful study of those international incidents which have led to occupation of foreign territory is of great assistance for the study of intervention. Although the author has not devoted himself particularly to the matter of intervention, he has given it, incidentally, his careful consideration. A full index and table of contents makes it easy to locate the material. Professor Louis Renault, who never was given to mere compliment, is enthusiastic in his praise of this volume, which he calls a mine of information. (See Preface by Louis Renault.) We are especially indebted to M. Robin for his accounts of those instances which involve occupation for the guarantee of payment, occupation or intervention as a mandatory, and collective occupation or intervention.

**\*Rolin-Jaequemyns, Gustave, 1835—**

Le droit international et la phase actuelle de la question d'orient [International Law and the present situation of the Near Eastern question]. in *Revue de droit international et de législation comparée*, 1876, vol. 8, pp. 295-385.

1-7465

JX3.B4.Vol.8

A very important study which must have exercised some influence upon the action of the powers at the time. R-J considers the situation in the Near East as a menace to the peace of Europe, and concludes (p. 347) that the powers acting collectively derive from history and from treaties the right to unite to preserve the peace of Europe and to protect the interests of humanity. This study elicited from Professor Arntz a valuable letter which Rolin-Jaequemyns publishes (ibid, p. 675-682) with further discussion. [See under Arntz.] Rolin-Jaequemyns would seem to place the Near East in a special category in regard to the right of intervention. Hall (4 ed., § 95, p. 308, note) criticises this view when set forth by the same author in regard to the Græco-Turkish conflict of 1885-6. (*Revue de droit international*, vol. 18, p. 608.)

**\*\*Rolin-Jaequemyns, Gustave, 1835—**

Note sur la théorie du droit d'intervention.  
in *Revue du droit international et de législation comparée*, 1876, vol. 8, p. 673-682.

1-7465

JX3.R4.Vol.8

In addition to the preceding article which was called forth by the letter of Professor Arntz herein printed with further discussion by Rolin-Jaequemyns.

**Rolin-Jaequemyns, Gustave, 1835—**

La question d'orient en 1885-86.  
in *Revue du droit international et de législation comparée*, 1885, vol. 18, pp. 378-432, 506-535; continued under the title, *Le conflit gréco-turc en 1885-86*, *ibid*, p. 591-626.

1-7465

JX3.R4.Vol.18

Discusses collective intervention and the control of the Balkans by the concert of Europe. Blames the jealousies of powers for unsatisfactory condition. Considers that collective intervention in the Orient is on a different place from elsewhere (p. 605). Hall (4 ed., § 95, p. 308, note) criticizes this view.

**\*\*\*\*Rossi, Pellegrino.**

Intervention.

in *Archives de droit et de législation*, (Brussels) 1837, vol. I, p. 353-375.

[In Library of Congress, Law Periodicals]

Written apropos of the appearance of Wheaton's Elements of International Law, London, 1836. This brief study of the theory and practice of intervention is to be ranked with that by Senior as among the very best. The juridical basis for intervention is laid down in a masterly fashion. Although the incidents are treated with a too evident bias in favor of the Monarchy of July, every word is illuminating. Everything considered, it is perhaps the discussion of intervention which has best known how to insist upon the fullest respect for the principles of international law without disregarding the reasonable requirements of practical statecraft. Hidden away in a little known and short lived magazine this valuable article appears to have escaped the notice of all but a few investigators.

\*\*\*\***Rotteck, Hermann Rodecker von, 1816-1848.**

Das Recht der Einmischung in die inneren Angelegenheiten eines fremden Staates vom vernunftrechtlichen, historischen und politischen Standpunkte erörtert.

*Freiburg i. B., A. Emmerling, 1845. xxviii+104 p., 21½ cm.*

10-5804

JX4481.B7

This work seems to be the first to undertake a systematic and comprehensive study of intervention. Rotteck defines intervention by the postulate, "No state has a right to intermeddle in the internal (that is the constitutional) affairs of another state." (p. 7; cf. p., 16-17.) He enumerates the alleged exceptions (p. 10-11), and in the following pages (11-47), takes them up seriatim. He attempts to refute them or to show that they are not really exceptions. The remainder of the work examines the incidents which have occurred, and discusses the primacy of the great powers. Rotteck denies the right to intervene on the ground that changes in a neighboring state, constitute a danger for internal affairs (p. 22-3). In discussing the doctrine of necessity (p. 20-25), he says that necessity does not make legal, but excuses violations. Humanitarian intervention should be considered as a violation of law, but sometimes excused, or even applauded, as we excuse a crime (p. 36). Bernard, Mill, and Hall have adopted this latter doctrine. Berner classes this as one of the best treatments. Rotteck, he says, has shown intelligence and learning, but places too much emphasis on the principle of non-intervention. I would add that Rotteck is remarkably fair, but not a close reasoner.

\*\*\*\***Rotteck, Karl Wenzeslaus Rodecker von, 1775-1840.**  
[Grossherz, Bad. Hofrath und Professor.]

Lehrbuch des Vernunftrechts und der Staatswissenschaften.

*Stuttgard, Gebruder Franckh, 1829-35. 4 vols., 21 cm.*

10-23478†

JC233.B35

Berner rates it as one of the most important works taking into account the historical development and fundamental principles. Vol. III is devoted in part (p. 1-166) to a study of foreign relations and international law.

**++ Rougier, Antoine.**

Les guerres civiles et le droit des gens.  
*Paris, Larose, 1903. 569 p., 8°.*

6-27289

JX4541.B7

Intervention in civil wars is discussed, pp. 315f.

**Rougier, Antoine.**

L'intervention de l'Europe dans la question de  
 Macédoine.

in *Revue générale du droit international public*,  
 1906, vol. XIII, p. 178-200.

10-31105

JX3.R56.Vol.13

**+++ Rougier, Antoine.**

La théorie de l'intervention d'humanité.  
 in *Revue générale du droit international public*,  
 1910, vol. XVII, p. 468-526.

10-31105

JX3.R56.Vol.17

Is a very thorough consideration of the question which does much to clear up the theory. Rougier first shows the weakness in the postulate of the absolute independence and equality of States, and consequently overcomes the strongest argument in support of the doctrine of Non-Intervention. He then examines whether there is any law of humanity in support of which intervention may be undertaken and finds it in the law of solidarity. He next discusses who may intervene and well says that the generally accepted idea of collective intervention adds nothing to the justice of the action. Finally, he advocates intervention by a disinterested power. He does not seem to consider that such a requirement would remove intervention from practical politics.

The various instances of intervention on the ground of humanity are noted and tersely analyzed. The article is of first rate importance for the study of this part of the subject.

**++ Rougier, Antoine.**

Maroc: La question de l'abolition des supplices  
 et l'intervention européenne.  
 in *Revue générale de droit international public*,  
 1910, vol. XIX, p. 98-102.

10-31105

JX3.R56.Vol.19

I have translated a portion of this in the text. See § 8 (d).

**Royal Commission:** See, **Fugitive Slaves.** Report on, 1876.

\***Russell, Bertrand Arthur William**, 1872. [M. A., F. R. S., Sometime Fellow and Lecturer in Trinity College, Cambridge.]

Why Men Fight, A Method of Abolishing the International Duel.

*New York, 1917, 272 p., 19½ cm.*

17-1513

HN389.R96

Written mainly before 1915, to judge by the footnotes. Russell makes a valuable contribution to the study of the causes of war and the means to avoid it. This he finds in a substitution of creative "impulses" (instincts) for "impulses of possession." In the main, it is a fair and objective study. Nevertheless, the author seems to take for granted that all men condemn the competitive evolution of war, which Steinmetz considered the purpose and justification of war, almost its sanctification. Russell is the most objective of the subjective pacifists I have encountered. No student of politics should fail to read this work.

**Russell, John Russell**, 1st earl, 1792-1878.

Public address discussing policy of government relative to intervention.

in *London Times*, September 28, 1863.

Discusses Polish question, and excuses failure of Great Britain to intervene; declares intervention in Mexico was for the protection of British rights only; conduct towards United States neutral and fair. Cited by Abdy's Kent, p. 48.

\***Russell, John Russell**, 1st earl, 1792-1878.

An Essay on the History of the English Government and Constitution from the reign of Henry VII to the Present Time.

*New edition, London, Longmans, Green & Co., 1865.*

[Harvard Law Library]

Certain phases of intervention are discussed in the introduction (p. lxxxi-xciii), and Russell makes an attempt at definition



(p. lxxi-lxxii). See criticism of this by Stapleton (p. 10-15), who perhaps misunderstands Russell's careless language. Russell discusses Denmark's rejection of England's suggestions for compromise (p. xcii); but compare Sir Robert Morier (vol. I, p. 385-392), who gives the real reason why Denmark refused.

**Salvioli, Giuseppe, 1857—**

Le concept de la guerre juste d'après les écrivains antérieurs à Grotius. [Translated by Georges Hervé.]

*Paris, 1918, 128 p., 17 cm.*

19-19535

JX4508.S3

**Schönborn, Walther, 1883—**

Die Besetzung von Veracruz (zur Lehre von den völkerrechtlichen Selbsthilfeakten) mit einem Anhang: Urkunden zur Politik des Präsidenten Wilson gegenüber Mexiko.

*Berlin [etc.], W. Kohlhammer, 1914.*

16-15253

F1234.S36

**Schubert.**

Ueber die Lehre der politischen Intervention. Cited by H. von Rotteck (Recht der Einmischung 1845), p. 8.

*Königsberg, 1831.*

I was unable to consult this work.

**\*\*\*\*Senior, Nassau William, 1790-1864.**

Review of Wheaton's International Law. in *Edinburgh Review*, 1843, vol. 156, p. 334-358.

AP4.E3 Vol.156

In an article in the *Edinburgh Review*, Mr. Nassau Senior discusses Wheaton's book which had recently appeared. The article is more than a review. It is a valuable commentary on certain portions of international law. Mr. Senior devotes especial attention to the question of intervention and discusses the action taken to preserve the balance of power and to dictate in regard to internal affairs. He points out that the former is the weapon

of the weak against the strong and is difficult to organize. From this, he concludes, it is not likely to be often resorted to or abused. Interference in the internal affairs is, on the contrary, the weapon of the strong against the weak. Mr. Senior discusses several instances in European history and reaches the following conclusion on pp. 365-66:

“It does not appear that interference for the mere purpose of preventing the oppression of subjects by their prince, is now held lawful by any nation.....

“On the other hand it appears to be the opinion of Russia, Austria and Prussia, that the rights of a sovereign against his subjects are whatever he may think fit to claim.....

“England admits the validity of every established government, whether depending on usage, on popular revolt, or on royal usurpation. Subject to the universal exception, that every state has a right to protect itself against great mischief, or even imminent danger, arising out of the domestic affairs of another, she denies that international law allows one state forcibly to interfere in the internal affairs of another, on any pretext or to any extent whatever. She denies that third parties can lawfully interfere to force a people to obey their sovereign; as she denies that they can lawfully interpose to force a sovereign to respect the liberties of his people.”

Senior's discussion is one of the best which has appeared. It probably has not exerted as large an influence as it deserves because the back files of a magazine are not always accessible, but he is cited by several authorities (Moore's Digest VI: 3; Creasy, p. 297).

**++Snow, Alpheus Henry, 1859-1920.**

The Question of Aborigines in the Law and Practice of Nations.

*Washington, D. C., Government Printing Office, 1919, 218 p., 23½ cm.*

20-13103

JV305.S6

See Chapter XIV, p. 187-201, “The Doctrine of ‘Intervention for Humanity’ and its Effect on the Development of the Law of Nations regarding Aborigines.”

**Soulé, Pierre, 1802-1870.**

Speech on Non-Intervention, in the U. S. Senate, March 22, 1852.

*Washington, J. T. Towers, 1852. 46 p., 22½ cm.*

10-25145

E429.S72

Recalling various precedents in American diplomatic history, Soulé argues that the United States should vigorously oppose the action of Great Britain in policing the sea about Cuba to prevent the landing of hostile expeditions on that island.

**Sproxton, Charles, 1890-1917.**

*Palmerston and the Hungarian Revolution. [A dissertation which was awarded the Prince Consort prize, 1914.]*

*Cambridge, University Press, 1919. xi+148 p., front (port.) 20 cm.*

20-286

DB936.S7

An excellent account of the political history of the Hungarian Revolution and the connected question of the refugees in Turkey. Palmerston's fear that a weakened Austria would remove a counterpoise (pp. 37, 77) is given as the motive of his refusal to oppose Russian interference. Palmerston was consistent in supporting Italy against Austria since he considered Italy a weakness for Austria (p. 38). Napoleon III refusal to intervene was due to his desire to secure the support of the Northern powers by a revision of the treaties of 1815 (pp. 99-100) and on the very eve of invading Hungary Nicholas declared he would recognize the French Republic (p. 101). Responding to the pressure of public opinion, Palmerston exerted pressure on Turkey to prevent the extradition and to secure the liberation of the refugees. (p. 111.)

**Stambler, Bernard.**

*L'histoire des Israelites roumains et le droit d'intervention. [Doctoral dissertation, University of Paris.]*

*Paris, Jouve et cie., 1913. 315 p., 25 cm.*

15-10261

DS135.R787

Stambler's book is principally devoted to a study of the Jews in Roumania and the law of nationality. Intervention is considered (p. 197-225, more especially the right of the United States to protest (1902) against the treatment of the Jews. The author

does not consider that the action of the United States constitutes an intervention, and denies the right to intervene on the grounds of humanity. The bibliography of the question of the Jews in Roumania (p. 309-312) touches but incidentally works upon intervention. Reviewed in *revue de droit international et de législation comparée* 1914, Vol. 46, p. 88.

**\*\*Stapleton, Augustus Granville, 1800-1880.**

Intervention and Non-Intervention; or, The Foreign Policy of Great Britain from 1790 to 1865.

London, J. Murray, 1866. ix+308 p., 23 cm.

10-17440†

JX4478.S8

Under the cover of a scientific discussion of the principles governing intervention Stapleton launches into a bitter partisan attack upon Palmerston and his policy of interference in support of liberalism on the Continent. But the very method of attack requires Stapleton to lay down the fundamental principles of action undertaken to constrain other states to adopt a desired course, and this discussion is of real scientific value notwithstanding the errors into which Stapleton falls. He defines (p. 6) the true rule of non-intervention [non-interference] as follows:

“No State has a right **FORCIBLY** to interfere in the internal concerns of another State, unless there exists a *casus belli* against it. For, if every powerful State has a right at its pleasure *forcibly* to interfere with the internal affairs of its weaker neighbors, it is obvious no weak State can be really independent. The constant and general violation of this law would be, in fact, to establish the law of the strongest.

“This principle as here laid down is the true principle of ‘non-intervention.’ But, by leaving out the word *forcible*, and by then applying it, without limitation or explanation, much confusion respecting it has arisen.

“It is essential therefore that it should be correctly defined; for, taking it in the broad sense in which it is sometimes taken, as forbidding all kinds of intervention in the internal affairs of neighboring States, it is neither defensible in theory nor harmless in practice.”

Stapleton does not perceive that intervention or interference would have no effect the moment that his rule was sufficiently well recognized to restrain the action of would-be law-abiding states. His formula is the *reductio ad absurdum* which we find so frequently in the followers of Cobden. Palmerston himself refuted this doctrine when in 1832 he wrote:

“In adverting, therefore, to the affairs of Poland, great delicacy and caution will be required. It would be inconsistent with the power and dignity of the British Empire to insist too strongly upon points which, from the considerations stated above, it might be inexpedient, if not impossible, to enforce by arms.” (British State Papers, vol. 37, p. 1439-1440.)

We must, however, give Stapleton credit for perceiving the folly of a general condemnation of all intervention or interference which is not undertaken in defense of clearly recognized rights (see discussion of political action in our §§ 20-23). He is also to be commended for basing his attack and his criticism upon a careful analysis of the grounds of the various instances of intervention. The remainder of the book (pp. 37-308) discusses with marked partisan bias the foreign policy and interventions of the British Government from 1790-1865. The appendix (pp. 279-308) contains valuable documents.

**\*Stockton, Robert Field, 1795-1866.**

Speech on Non-Intervention, delivered in the U. S. Senate, February 2, 1852.

*Washington, Printed by J. T. Towers, 1852. 8 p., 23 cm.*

19-20271

E429-S86

**Stowell, E. C. and Munro, H. F.**

International Cases, Vol. I, Peace; Vol. II, War and Neutrality.

*Boston, Houghton, Mifflin Co., 1916.*

16-9557

JX68.S8

Contains concise accounts of some of the more important incidents of intervention and interference.

**Strauch, Hermann [Professor, Heidelberg].**

Intervention.

in *Bluntschli's Staatswörterbuch (Löning's edition)*. Zurich, 1871, vol. II, p. 274f.

9-20074†

JA.63.B8

Cf. below this author's more complete study of intervention, 1879.

\*\*\*\***Strauch, Hermann** [Professor, Heidelberg].

Zur Interventionslehre; eine völkerrechtliche Studie.

*Heidelberg, 1879. 39 p., 8°.*

[State Department Library,  
Harvard Law Library,  
Boston Athenaeum]

This little pamphlet prepared in honor of Professor Bluntschli's fifty years of teaching is probably the most complete and most rigidly scientific discussion of intervention in any language. For Strauch intervention is a right of the community of states to prevent any abuse of independence which endangers the common security, including necessarily all serious violations of the law of nations. He recognizes the right of third nations to intervene in such cases as he recognizes the right of individual states to intervene in internal matters when the latter are in such a condition as to endanger the rights of other states.

But Strauch excludes humanitarian intervention because he thinks such questions are not matters which concern the community of states. Every state, however, is free to check the barbarous or inhumane conduct of any other state which does not enjoy a fully independent status. Any attempt of another state to oppose such corrective action is, according to Strauch, a political matter.

**Strêzoff, G.**

L'intervention et la péninsule balkanique [Dissertation, University of Geneva].

*Geneva, 1893. 252 p., 23 cm.*

[Columbia University Library]

**Tanoviceano, Jean.**

De l'intervention au point de vue du droit international. [Dissertation, University of Paris. Bound with and following a dissertation on Roman Law, "De l'infantia."]

*Paris, 1884. 153 p., 8°.*

[Harvard Law Library,  
New York Public Library]

Holland (Studies, p. 174) says: "Roumania in the person of M. Tanoviceano, has produced an international jurist of no small

merit. His treatise, *De l'intervention*, is the best book on the subject." I cannot find that the work is of unusual merit.

**Trevilla Paniza, Diego.**

La intervención por causas financieras. [Doctoral dissertation.]

*Granada, Tip. P. Ventura Traveset, 1910. 71 p., 21 cm.*

16-3712

JX1393.D8T7

Discusses intervention and the Drago doctrine. I did not examine this work.

**Trummer, Dr. K.**

Anti-Rotteck. Eine Reihe von Fragmenten über des Prof. v. Rottecks Lehrbuch des Verunftrrechts.

*Hamburg, 1836.*

[Reichstag Library, Berlin]

Cited by Heiberg (p. 15), who indicates that Trummer was an advocate of wide latitude in interference.

**U. S.: Solicitor of the Department of State.**

Right to Protect Citizens in Foreign Countries by Landing Forces.

See **Clark, Joshua Reuben, Jr.**

**Ureña y Sanz, Rafael de.**

Nuevas orientaciones del principio de intervención, doctrina de Drago.

*Madrid, Est. tip. de los hijos de R. Alvarez, 1910. 71 p., 24 cm.*

11-25359

JX4481.U8

A preliminary study of intervention, followed by a consideration of the Drago doctrine. Good for Drago doctrine, but of no particular value for intervention.

**Urien, Cárlos M.**

El derecho de intervención y la doctrina de Monroe (antecedentes históricos).

*Buenos Aires, Impr. J. Peuser, 1898. 174 p., 17½ cm.*

9-19546

JX1425.U8

**Valverde, Antonio L.**

La intervención; estudio de derecho internacional publico—con emprólogo del Sr. Rafael Montoro.

*Habana, Ruis y hermano, 1902. x+195 p., 8°.*

Obra premiada por el colegio de abogados de la Habana en el certamen de 1900 á 1901.

[New York Library,  
Harvard Law Library]

One of the most extensive studies of the text-book authorities. The author (p. 74) concludes that the Italian school is wrong in considering intervention as always illegal, but thinks intervention is a political matter, and that it is impossible to fix its limits exactly as some writers claim to do. The remainder of the book considers the instances of intervention. The study is careful, but does not add to the understanding of the deeper problems of the subject.

**++Vattel, Emmerich de, 1714-1767.**

The Law of Nations [Le droit des gens; ou Principes de la loi naturelle appliqués à la conduite et aux affaires des nations et des souverains 1758], C. G. Fenwick's English translation, with an introduction by Albert de Lapradelle.

*Washington, Carnegie institution of Washington, 1916. 3 vols. 26 cm. (Vol. 3 contains the translation.) [In Carnegie Classics of International Law.]*

16-17762

JX2414.A1 1916

**+++Vidari, Ercole.**

Memoria del Prof. Ercole Vidari. Del principio di intervento e di non intervento.



*Milan, Amministrazione del Politecnico, 1868. A reprint from "Il Politecnico." 81 p. Signed Pavia, December 22, 1867.*

[Harvard Law Library]

This is one of the best of the early studies of the subject, and shows the author's scientific spirit by a fair analysis, at a time when the national aspirations of Italy were distorting men's vision, as shown in Mamiani's work.

**Vié, Louis.**

Des principales applications du droit d'intervention des puissances européennes dans les affaires des Balkans depuis le traité de Berlin de 1878 jusqu'à nos jours. Étude de droit international public et d'histoire diplomatique. [Inaugural dissertation, University of Toulouse.] *Toulouse, Impr. Lagarde et Sebille, 1900. 158 p., 4°.*

1-6411

JX4481.V6

**Wachter, Alfred von.**

Die völkerrechtliche Intervention als Mittel der Selbsthülfe. [Dissertation at Erlanger University.]

*Munich, J. Krämer, 1911. 67 p., 8°.*

[New York Public Library  
Berlin Card, U.12.946]

A painstaking, but somewhat immature study, as shown by the failure to appreciate the relative value of the authorities, some of the most important of which are omitted. It is not an important work.

**\*Warner, Horace Everett, 1839—**

The Ethics of Force.

*Boston, Ginn & Co., 1905. v+126 p., 20 cm.*

5-19064

JX1953.W36

"This little volume had its origin in a series of papers read to the Ethical club of Washington, D. C., at the time just preceding and following the Spanish war." (—Pref.)

Library of Congress analysis of contents: I. Introduction. II. The ethics of heroism. III. The ethics of patriotism. IV. Can war be defended on the authority of Christ? V. Can war be defended on the grounds of reason? VI. Some objections.

One of the few rational discussions upon the theme of the irrationality of war, by one who knows from experience whereof he speaks.

### Werdenhagen, Angelius.

Synopsis in sex libros. Johan Bodini de Republica, *ἑρωτοπορεῖον* generale et necessarium. *Amsterdam, 1645.*

Esmein, in *Nouvelle revue historique de droit français et étranger*, 1900, p. 574, says this author corrected Bodin's logic: "He only admits the repression of a tyrant by a neighboring king when the territory of the latter has been invaded by the tyrant." Esmein remarks that this is the denial of all right of intervention in internal affairs. We should take note of this as an early exposition of the doctrine of absolute non-intervention.

I have not examined this work.

### Westlake, John, 1828-1913.

Reprisals and War.

in *Law Quarterly Review*, April, 1909, p. 127-136.

A very searching examination of the principles governing the use of force without war. Also published in *The Collected Papers of John Westlake on Public International Law*, Cambridge [Eng.], 1914. [15-9571 JX2588.C7 1914.]

### \*\*\*\* Westlake, John, 1828-1913.

International Law.

*Cambridge, England, Part I, Peace, 1st ed., 1904; 2 ed., 1910. Part II, War, 1st ed., 1907; 2 ed., 1913.*

11-1990

JX2588.I 6 1910

These two volumes contain the best and most comprehensive discussions of the principles of intervention. Westlake is the student's surest guide. Especially important are vol. I, ch. XIII, "Political Action of States," (p. 300-327); "Self-defense [self-help] on the open sea in time of peace" (p. 171-176); "Recognition of new states arising from insurrections" (p. 57f);

vol. II, ch. I, p. 1-31, "War and forcible measures short of war;" Ch. VII, (p. 190-198), "The Theory of Neutrality." It is interesting to compare these opinions with Westlake's Chapters on the Principles of International Law, Cambridge, 1894, for we see how carefully the author had gone over what he had written a decade before.

**Wharton, Francis, 1820-1889.**

De l'assistance prêté à une insurrection étrangère.

*Referred to in Clunet's Journal, 1883, p. 375-377.*

Discusses the insurrection in Naples. Of no particular importance.

**\*Wheaton, Henry, 1785-1848.**

Elements of International Law: with a sketch of the history of the science.

*London, B. Fellowes, 1836. 2 vols., 22 cm.*

5-29661

In reviews of Wheaton, Pellegrino Rossi and Nassau Senior have both criticized Wheaton for his defective treatment of intervention and each critic has been himself stimulated to write remarkable studies of this subject. Indirectly we owe to Wheaton the best discussions of intervention which have appeared in English and French.

**Wheaton, Henry, 1785-1848.**

History of the Law of Nations in Europe and America; from the earliest times to the treaty of Washington, 1842.

*New York, Gould, Banks & Co.; [etc., etc.] 1845. xiv+797 p., 24½ cm.*

5-29665

JX2495.H2 1845

"Originally written and published in the French language as a Mémoire in answer to the following prize question proposed by the Academy of moral and political sciences in the Institute of France: 'Quels sont les progrès qu'a fait le droit des gens en Europe depuis la paix de Westphalie?'"—Pref.

**Wildman, Richard.**

Institutes of International Law.  
*London, W. Benning & Co., 1849-50. 2 vols., 22 cm.*

10-17173†

JX2592.I5 1849

**\*\*\*Woolsey, Theodore Dwight, 1801-1889.**

Introduction to the Study of International Law.  
*Boston and Cambridge, J. Munroe & Co., 1860. xvii+486 p., 19½ cm. Preface is dated May 17. 6th ed., rev. and enl. by Theodore Salisbury Woolsey, New York, C. Scribner's Sons, 1901. xix+527 p., 21 cm.*

10-17164†

JX2498.I6 1860

4-4618-4

JX2498.I6 1901

At this period, so important for the development of the law governing intervention, this American work takes advanced ground. Especially interesting are §§ 18-23, 41-50; p. 21-28, 18-112. There have been many later editions of this useful work.

**\*\*\*Woolsey, Theodore Salisbury, 1852—**

America's Foreign Policy.  
*New York, The Century Company, 1898. x+294 p., 19 cm.*

98-428-4 Revised.

JX1415.W7

Is a collection of articles on diplomatic incidents considered from the point of view of the principles justifying the action taken, and therefore of great value for a study of the justifiable grounds for intervention. It is one of the best discussions of Intervention in Cuba, (p. 25-100), and shows an understanding of the fundamental principles. Of especial value is Professor Woolsey's consideration of humanitarian intervention.

**\*Wright, Quincy.**

Effects of the League of Nations Covenant.  
*in American Political Science Review, November, 1919, p. 556-576.*

Discusses the obligation to intervene to vindicate the law and considers that the establishment of such an obligation is due to the League of Nations.

**Zeballos, E. C.**

Intervention armée européenne en Venezuela à la suite de réclamation.

in *Bulletin Argentine de droit international privé*, 1903. Vol. I, p. 145-177.

Discusses the limits of the right of interposition for protection of national rights.

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The following page references are mainly to subjects, but the pages where authorities are quoted are also indicated, and the reference is generally enclosed in parenthesis when it is no more than a mere citation. The Bibliography should be consulted for critical notes in regard to many of the authorities herein listed.

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